COLLEGIUM DE
SOMERVILLE
DONEC
RURSUS
IMPLEAT
ORBEM

971.02
B 1 (III)

LORD DURHAM'S REPORT

ON THE AFFAIRS OF

BRITISH NORTH AMERICA

EDITED

WITH AN INTRODUCTION

BY

SIR C. P. LUCAS, K.C.B., K.C.M.G.

IN THREE VOLUMES

VOLUME III: APPENDIXES

OXFORD

AT THE CLARENDON PRESS

1912

HENRY FROWDE, M.A.
PUBLISHER TO THE UNIVERSITY OF OXFORD
LONDON, EDINBURGH, NEW YORK
TORONTO AND MELBOURNE

CONTENTS

PART I

SELECTIONS FROM APPENDIXES TO LORD DURHAM'S REPORT, A FULL LIST OF WHICH IS HERE GIVEN

[*The sections marked with an asterisk have not been reprinted.*]

APPENDIX A

ORDERED TO BE PRINTED FEBRUARY 11, 1839.

PAGE

No. 1.—Special Report to His Excellency the Governor-General by Mr. R. D. Hanson (Assistant-Commissioner of Crown Lands and Emigration) on the excessive Appropriation of Public Lands, under the name of Clergy Reserves . . . 1

No. 2.—Special Report to his Excellency the Governor-General from the Commissioner of Crown Lands and Emigration on Militia Claims to grants of Land 6

*No. 3.—State of the Hospitals, Prisons, Charitable Institutions, &c., in Lower Canada.

*No. 4.—Addresses presented to the Earl of Durham in September and October, 1838.

No. 5.—Letter from Mr. William Young, on the State of Nova Scotia 12

No. 6.—Letter from the Right Rev. A. Macdonell, Catholic Bishop of Kingston 18

*No. 7.—Memorial of Anthony Manahan, Esq., complaining of the total exclusion of Roman Catholics (Irish) from all places of emolument and honour in the power of the Government of Upper Canada.

*No. 8.—Memorial of Representatives of Scotch Church in Montreal.

No. 9.—Address from the Constitutional Association of Montreal to the inhabitants of British America 21

APPENDIX B

ORDERED TO BE PRINTED MARCH 5, 1839.

Commission by the Earl of Durham, appointing Charles Buller, Esq., to proceed with the utmost despatch to inquire into the past and present methods of disposing of Waste Lands, Woods, Forests and other Domains and Hereditaments the Property of the Crown in Lower Canada, &c. . 29

Circular Despatches from the Governor-General to the respective Lieutenant-Governors of Her Majesty's Colonies in North America 32

Report to his Excellency the Governor-General 34

*Minutes of Evidence.

APPENDIX C

ORDERED TO BE PRINTED MARCH 27, 1839.

1.—Reports of Commissioners of Inquiry into the Municipal Institutions of Lower Canada.

The Commission 131

Copy of Letter of Instructions from Chief Commissioner 133

PAGE

Preliminary Report of Assistant Commissioners . . 136
General Report of Assistant Commissioners . . . 140
*Appendix.
*2.—Report from the Bishop of Montreal on the state of the Church within his Diocese. .

APPENDIXES D AND E

ORDERED TO BE PRINTED JUNE 12, 1839.

APPENDIX D.

Commission by the Earl of Durham, appointing Arthur Buller, Esq., to proceed with the utmost despatch to inquire into and investigate the past and present modes of disposing of the produce of any Estates or Funds applicable to purposes of Education in Lower Canada, &c. 238
Report of the Commissioner of Inquiry into the state of Education in Lower Canada, &c. 240
*Returns made to Education Commission, 1838.
†Report of Mr. Dunkin, the Secretary to the Commission . . . 294
*Plan of Seigniory of Cap de la Magdeleine.

APPENDIX E.

*Copy of a Letter from the Earl of Durham to the Marquis of Normanby, dated 31 May 1839.
*Report from the Chief Secretary, on the Commutation of the Feudal Tenures in the Island of Montreal, and other Seigniories in the possession of the Seigniory of St. Sulpice of Montreal.
*Ordinance of the Governor-General and Special Council of Lower Canada, for incorporating the Seminary of St. Sulpice of Montreal.
*Report from Mr. Turton, on the Establishment of a Registry of Real Property in Lower Canada.

PART II

DESPATCHES RELATING TO LORD DURHAM'S MISSION AND RESPONSIBLE GOVERNMENT REPRINTED FROM BLUE BOOKS

Despatch from Lord Glenelg to the Earl of Durham, January 20, 1838 305
Despatch from Lord Glenelg to the Earl of Durham, April 3, 1838 . 311
Despatch from Lord Glenelg to the Earl of Durham, April 21, 1838 . 314
Extract of a Despatch from the Earl of Durham to Lord Glenelg, August 9, 1838 319
Lord John Russell's despatch of October 14, 1839 . . . 332

PART III

SKETCH OF LORD DURHAM'S MISSION TO CANADA IN 1838. Written by Mr. Charles Buller, in 1340 336

† Extract only reprinted.

PART I.

SELECTIONS FROM

APPENDIXES TO LORD DURHAM'S REPORT

AS LAID BEFORE PARLIAMENT

APPENDIX A.

ORDERED TO BE PRINTED FEBRUARY 11, 1839.

CONTENTS.

No. 1.—Special Report to His Excellency the Governor-General by Mr. R. D. Hanson (Assistant-Commissioner of Crown Lands and Emigration) on the excessive Appropriation of Public Lands, under the name of Clergy Reserves.

No. 2.—Special Report to his Excellency the Governor-General from the Commissioner of Crown Lands and Emigration on Militia Claims to grants of Land.

*No. 3.—State of the Hospitals, Prisons, Charitable Institutions, &c., in Lower Canada.

*No. 4.—Addresses presented to the Earl of Durham in September and October, 1838.

No. 5.—Letter from Mr. William Young, on the State of Nova Scotia.

No. 6.—Letter from the Right Rev. A. Macdonell, Catholic Bishop of Kingston.

*No. 7.—Memorial of Anthony Manahan, Esq., complaining of the total exclusion of Roman Catholics (Irish) from all places of emolument and honour in the power of the Government of Upper Canada.

*No. 8.—Memorial of Representatives of Scotch Church in Montreal.

No. 9.—Address from the Constitutional Association of Montreal to the inhabitants of British America.

[The sections marked with an asterisk have not been reprinted.]

No. 1.

SPECIAL REPORT to His Excellency the Governor-general by Mr. *R. D. Hanson* (Assistant-commissioner of Crown Lands and Emigration) on the excessive Appropriation of public Land, under the name of 'clergy reserves'.

My Lord, Quebec, 29 October, 1838.

IN compliance with your Excellency's direction, I have the honour to furnish a report upon the subject of the excessive appropriation of public land in the two provinces of Upper and Lower Canada, under the name of 'clergy reserves'.

The clergy reserves in both of these provinces are made under the authority of the Act 31 Geo. 3. c. 31, commonly

known as the Constitutional Act. The 36th section of that Act, after enabling His Majesty to authorize the Governor or Lieutenant-governor of Lower or Upper Canada to make out of the lands of the Crown, within either province, such an allotment and appropriation 'for the support and maintenance of a Protestant Clergy' as might bear a due proportion to the lands previously granted, enacts, 'that whenever any grant of lands within either of the said provinces shall hereafter be made by or under the authority of his Majesty, his heirs or successors, there shall at the same time be made in respect of the same, a proportionable allotment and appropriation of lands for the above-mentioned purpose, within the township or parish to which such lands, so to be granted, shall appertain or be annexed, or as nearly adjacent thereto as circumstances will admit; and that no such grant shall be valid or effectual, unless the same shall contain a specification of the lands so allotted and appropriated in respect of the lands to be thereby granted; and that such lands so allotted and appropriated shall be, as nearly as the circumstances and nature of the case will admit, of the like quality as the lands in respect of which the same are so allotted and appropriated, and shall be, as nearly as the same can be estimated at the time of making such grant, equal in value to the seventh part of the lands so granted.'

By instructions issued by the British Government, addressed to the Governor and Lieutenant-governor of Lower and Upper Canada, the ungranted public lands in both provinces were directed to be laid out in townships of certain fixed dimensions, generally ten miles square, containing, after making the necessary deduction for roads, about 63,000 acres. These townships were divided into lots of 200 acres each. With a view to supposed convenience and uniformity of appropriation, it was decided by the Provincial Government, that the land to be appropriated for the clergy in respect of all grants should be set apart at the time of the survey of the townships; and, in order to be sure that the lands appropriated for this purpose should be of equal value to the land open to be granted, it was settled, that the clergy reserves should be interspersed at equal intervals all over the township. But, instead of reserving every eighth lot, which would have been equal 'to the seventh part of the land to be granted,' every seventh lot was set apart for this purpose. The same mode of reserving the lots, and the same amount of reservation, was pursued in both provinces. In each province also another seventh of every township was set apart in a similar

manner, and termed 'Crown reserves', in order that these reserves might in after years furnish the Government with a revenue independent of taxation.

In Upper Canada a practice prevailed of making all grants from the Crown, whatever might be the amount of the grant, in separate lots. Two or three or more of these lots might happen to be situate in the same township, if the person entitled to the grant chanced to find in that township a sufficient quantity of land of the quality and position that he desired. But it frequently happened that an individual having a liberty of choice over all the surveyed lands of the province, which had not been granted or appropriated, preferred receiving his grant in separate lots, and would often wait for a considerable period, until he could obtain what he deemed a suitable location, rather than put up with an inferior lot. It therefore generally happened that no grant in any one township was equal to more than from 200 to 600 acres, and that therefore it was necessary to specify in the deed by which it was made as the appropriation for a Protestant clergy some fractional portion of a lot set apart for that purpose. It was therefore natural that the terms of the Act should be followed in spite of the original error of setting apart one-seventh instead of one-eighth, and in practice $28\frac{4}{7}$ acres were specified in each grant of a 200 acre lot, as the appropriation and allotment for the support and maintenance of a protestant clergy in respect of the same. This quantity, it will be seen, was equal in amount, and, the land being of the same average quality, equal also in value, to a seventh of the land granted. Assuming, however, each township to be of the dimensions stated above (63,000 acres), of which 9,000 were set apart for the clergy reserves, and 54,000 acres, including the reserves for the Crown, were open to grant, it is obvious that when the whole of the latter amount had been granted there would have been specified at the rate of $28\frac{4}{7}$ for each 200 acres, only $7{,}714\frac{2}{7}$ acres, leaving unspecified $1{,}285\frac{5}{7}$ acres, or one-seventh of the whole original proportion set apart for the clergy reserve. The practice pursued at first, with regard to the specification, was to specify six-sevenths of each separate lot, so that in every township there would be a portion of each lot nominally clergy reserve, but in reality still Crown land. For it would seem clear, under the words of the Act, that no land becomes clergy reserve until it has been specifically appropriated in respect of a grant from the Crown. The setting apart the lots in the diagram, and keeping them closed against settlement, was merely an

arrangement adopted for the supposed convenience of the land-granting department, and could have no effect upon the legal property in the land. It was a device adopted by the land-granting department, in order to comply with an enactment evidently made in ignorance of the degree in which the best method of executing it would be found cumbrous and complicated. At a later period, however, the practice of specifying only six-sevenths of each lot was changed, and, instead of a part, the whole of each lot was specified; but one-seventh of the reserved lots in each township was left in its original character of Crown land.

In the evidence of Mr. Radenhurst, the chief clerk in the Surveyor-general's office, it is stated that this excess has occurred in about two-thirds of the surveyed townships. From a careful consideration of the returns that he has supplied, it however appears that the actual excess at the present time is about 300,000 acres.

I have selected the case of Upper Canada in the first instance, because it is more simple, and because the practice of the Surveyor-general in making the actual appropriation to be specified in the grant, by its conformity with the terms of the Act, exhibits clearly the nature and extent of the original error committed by the Governor and Council, in setting apart the seventh of each township. In Lower Canada the same amount of reservation was made for both the Crown and the clergy; but the different methods of granting land pursued by the Government of that colony led to a practice on the part of the Surveyor-general which greatly aggravated this original error. The first grant made after the passing of the Constitutional Act appears to have been to the Honourable Thomas Dunn and 47 others, of the whole of the township of Dunham, with the exception of the Crown and clergy reserve, or five-sevenths of the township, amounting to about 45,000 acres. In the patent for this grant the Surveyor-general specified the whole 9,000 acres of clergy reserve in the township as the allotment and appropriation in respect of the lands granted, and thus made the appropriation equal to one-fifth, instead of one-seventh, of the grant, being an excess in that particular case of $2{,}571\frac{3}{7}$ acres. In the ten following years after the making of this grant, nearly 1,500,000 acres were granted by the Crown in a similar manner, and in each patent the whole of the land set apart as a reserve for the clergy in the granted portion of each township was specified as the allotment and appropriation for the clergy in respect of the grant. The practice

thus commenced was continued after the circumstances out of which it arose no longer existed, and it became a settled course to specify for the clergy in the patent for every grant a portion of land equal to one-fifth of the amount of the grant. So that instead of the reserve being at the rate of $28\frac{4}{7}$ for every 200 acres, it was at the rate of 40 acres, being an excess in each case of $11\frac{3}{7}$ acres, or two-fifths upon the reserve awarded by law.

When, however, the system of disposing of the public lands in the colony by sale, instead of free grant, was introduced, the Crown reserve of one-seventh was offered for sale with the other public land. But when the purchasers of this land, after having paid the purchase-money, applied for a patent, the Attorney-general of the province, by whom these patents were prepared, conceived that any patent for the land thus sold, as a grant of land under the authority of the Crown, would be rendered invalid by the clause in the Constitutional Act quoted above, unless it contained a specification of an allotment for the clergy in respect of the land it purported to convey. Under this opinion he refused to sign the draft of any patent which did not contain such specification. As however the whole of the land originally set apart for this purpose in each township had been already specified in previous patents, it was necessary that a fresh reserve should be made, either out of the Crown reserves in that township, or out of other lands, for the purpose. This was accordingly done, but this fresh reserve was again equal to one-fifth, instead of one-seventh of the land granted; so that the reserve for the clergy upon the grant of 54,000 being the six-sevenths of a township, exclusively of the reserve for the clergy, instead of $7{,}714\frac{2}{7}$ acres, amounted to 10,800 acres, being an excess of $3{,}085\frac{5}{7}$ acres. In addition, moreover, to the excess thus occasioned, the sale of a portion of the clergy reserves authorized by the Act of the Imperial Parliament, 7 Geo. 4, c. [*] has been made the occasion of a further reserve. It appeared to the Attorney-general that the sales under the authority of this Act were grants by the Crown, and, as such, required a specification of a reserve for the clergy in respect of the land comprised in any patent, in order to their being valid. This interpretation of the law prevailed, and accordingly a further reserve of one-fifth was made upon these sales, making the reserve 12,600, instead of $7{,}714\frac{2}{7}$ acres for each township of 63,000 acres, and the excess over the reserve

* Sic in the Blue Book, no doubt the Act of 1827, 7 & 8 Geo. IV, cap. 62. [Ed.]

which would appear to have been contemplated by the Constitutional Act, 4,885$\frac{5}{7}$ acres. Under the opinion held by the Attorney-general, similar reserves would have to be made upon any fresh sale of these additional reserves, and the result would be to give to the clergy a portion equal to one-fourth of the granted land, instead of one-seventh, being a clear excess of 75 per cent. The excess in Lower Canada does not amount at present to more than 227,000 acres over 44,600, or about 50 per cent., because four-sevenths of the clergy reserves are yet unsold, and consequently no additional reserves have been made upon them. The amount for which the land set apart on the map, as reserved for the clergy, has been sold in Upper Canada, is 314,150*l.*, and of this one-seventh, or 44,878*l.*, is in fact the proceeds of Crown land improperly sold under the name of 'clergy reserves', and belongs to the public. Of the 50,425*l.* produced by the sale of land similarly appropriated in Lower Canada, one-third or 16,808*l.* is the proceeds of Crown land, and also belongs to the public.

I have, &c.

(signed) *R. Davies Hanson,*
Ass^{t}-comm^{r} of Crown Lands and Emigration.

To His Excellency the Governor-general.

No. 2.

SPECIAL REPORT to His Excellency the Governor-General from the Commissioner of Crown Lands and Emigration.

To His Excellency the Governor General.

My Lord,

Special Report to His Excellency the Govenor-General from the Commissioner of Crown Lands and Emigration.

Having nearly concluded the inquiry into the disposal of crown lands and emigration in the Province of Lower Canada, I beg leave to report upon the subject of the militia claims to grants of land; a matter which appears to require the immediate interposition of Government, and cannot, without great inconvenience, be postponed till the completion of the inquiry in the neighbouring Provinces, which must precede any general report.

It appears that grants of land to individuals who served in the militia during the last American war, were first directed by instructions which in 1818 were transmitted by the Home Government to the Duke of Richmond, then Governor of the Province, under which all subsequent proceedings seem to have been taken; though, as no record of these instructions

is extant in the Colony, and no measures have been adopted to procure a copy of them from England, it is impossible to determine positively the parties to whom grants of land were directed to be made. From an Act of the Provincial Parliament, 59 Geo. 3, c. 23, appropriating 3,000*l.* for the survey of townships within which the grants were to be situated, it would seem that the instructions referred almost entirely to the embodied militia.

Under the Act referred to, several townships were surveyed and laid out, and on 2d November 1822, a proclamation was issued by Lord Dalhousie, directing all persons who had served in the six battalions of embodied militia, and such as had marched to the frontier, to bring in their claims before the 1st of May 1823. The time fixed by this proclamation as the limit within which claims were to be made, was afterwards enlarged, by another proclamation, to the 1st of May 1824, and again on the 29th of July 1829, by another proclamation, to the 1st of August 1830.

Under these proclamations, claims to a very considerable extent appear to have been made, and upwards of 200,000 acres have been granted: a question, however, arose at an early period as to the character of the individuals to whom the original proclamation was intended to apply. In addition to the six battalions of embodied militia, there were several corps of the sedentary militia, which had been called out during the course of the war, and had for a short time marched to the frontier, the members of which contended that they were entitled, under the terms of the proclamation, to the same benefit as those who had belonged to the six battalions of embodied militia. The claims of many of these individuals were favourably received by the Executive Council; and upon their report recommending grants, two or three persons received location tickets. When, however, the subject was brought under the notice of Lord Dalhousie, he refused to confirm the report of the Council, in the favour of an individual belonging to the sedentary militia, who had for a short time marched to the frontier, on the ground that the proclamation was only intended to apply to the six incorporated battalions. It does not appear that any claims of this nature have been subsequently allowed, with the exception of two or three which were sanctioned during Lord Dalhousie's temporary absence from the Colony, by Sir Francis Burton, the Lieutenant Governor.

All the grants made to claimants under this proclamation, were made upon conditions of settlement. The grantee was

to reside upon his property during a period of three years; to erect a dwelling-house, and to clear and cultivate four acres of land; these conditions were complained of as burthensome; and in 1837, Lord Gosford issued a proclamation, since confirmed by instructions from the Secretary of State for the Colonies, stating that the claims of the officers and men who served in the embodied militia during the last American war, had been brought under the notice of Government, and that such of the officers and men as had lodged their claims previous to the 1st of August 1830, should obtain land free from all conditions, except of performing the public and joint labour required by the law of the Province. By the same proclamation a board was constituted, to whom all claims were to be referred.

The claimants before that board have been of three classes; 1st. those who had served in the six battalions previously to 1830; 2d. those who had belonged to other corps, and who, according to the rule laid down by Lord Dalhousie, had no title under the original proclamation, but who had lodged their claims before 1830; and, 3d. those of whatever class who had not made their claims before that period. The number of individuals of the first class amounts to 2,195; of the second class, to 2,598; and of the third, to 1,669.

Upon the claims of the first class no question can arise; according both to the spirit and letter of the proclamation of Lord Gosford, they must be admitted. As little doubt can arise as to the third class, who are expressly excluded by the same proclamation; but there appears to be some difficulty with regard to the second class, arising partly from the ambiguous language of the proclamation of Lord Dalhousie, and partly from the fact that some few individuals belonging to that class have actually been admitted to the benefit of the proclamation. The conduct of Lord Dalhousie himself is explicit as to the meaning that he attached to his own proclamation; and it may be inferred from the sum granted by the Assembly for the purpose of surveying, that they did not contemplate these cases, which, if admitted, would have doubled the amount of land required as included in the proclamation, since they would in that event have hardly granted a sum so entirely inadequate to the purpose. It is, however, stated that there were one or two corps who were incorporated in the same manner, and performed the same services as the six battalions. If this is the case, individuals belonging to these corps, as their services were equal, would seem to be entitled to similar reward; and the terms of the

original proclamation, as well as those of all the Addresses of the House of Assembly on the subject, and of the last proclamation, are sufficiently comprehensive to include them. The question for the decision of the board to whom these claims have been referred, appears to be a question of facts. It would appear that those who were embodied and actually served on the frontier in the same manner as the six battalions, ought to be considered as entitled to the benefit of the proclamation, while all but these are altogether excluded. It may be mentioned that the exclusion of those belonging to the third class, who, notwithstanding ample notice, and two separate enlargements of time, neglected to make any claim in due time, is strictly in accordance with the view expressed by the Home Government in their Despatch to Lord Gosford, and with Lord Gosford's answer to the House of Assembly.

The proclamation of Lord Gosford, directing that letters patent for the land to be granted should contain none of the conditions formerly imposed, was founded upon an Address from the House of Assembly, representing those conditions as onerous to the militia men, and destructive of the value of the grant. There appears to have been much justice in this representation, since the greater part of the locations allotted to militiamen were distant from settlement, and the expense of clearing and cultivating the requisite quantity of land away from a market, and with no practicable roads leading to the spot, was very considerable, amounting in many cases to more than 5*s*. per acre upon the whole grant, while in this part of the Province land was selling as low as 1*s*. 3*d*. per acre. The performance of these settlement duties would not have been burthensome, if the individual acquiring the land had been about to establish himself upon it; but in a great number of cases the grantee had land elsewhere, from which he did not choose to remove, or the lot assigned to him might be 15 or 20 miles from a settlement; and in all such and similar cases the conditions were performed solely with a view to enable the individual performing them to obtain his patent. The grant was so situated generally as to be useless for the purpose of settlement; and the conditions to which it was subject rendered it of no value in any other point of view.

The House of Assembly, in urging the abandonment of these conditions, seems, however, to have overlooked, or to have been ignorant of, circumstances which have appeared in evidence before this commission, and which would entirely

defeat the intentions of the House, so far as they were desirous of conferring advantages upon the militiamen. It has been stated by all the witnesses who have been examined upon this subject, that the majority of the militiamen have already disposed of their claims, and that this has been done in most instances for very inadequate considerations. They were induced to do this partly by the difficulty and trouble of urging their claims in person, and the expense of employing an agent, and partly by the nature of the conditions they were required to fulfil. To such an extent is this sale of militia claims stated to have been carried, that it would seem almost as though the militiamen themselves were not more interested in any facilities for the acquisition of these grants, or relaxation of the conditions attached to them, than any other class of the community; and the benefit which, by a compliance with the wishes of the Assembly, Government designed to secure for a numerous and deserving class, would be reaped chiefly, if not entirely, by speculators, by whom these claims have been bought, and who, even supposing their bargain with the militiamen to have been fair, had assuredly no claim to any particular consideration from the Government. They had purchased the claims subject to the conditions of settlement, and paid a proportionably low price for them, and the abandonment of these conditions was a boon to them entirely uncalled for by the real circumstances of the case.

It is, in fact, obvious that, upon any system of land granting to such a body as the militia, a similar result to that which has been described as having actually taken place, must, to a certain extent, be expected. The majority of the militia were French Canadians, who have not hitherto been and are not now an emigrating people. Those of them, too, who might have been disposed to settle upon their lands, would find that the desert round them, consisting of lands which had been granted to non-resident militiamen, rendered their success as settlers impossible. They would have been isolated, or thinly scattered over a large tract of wilderness, away from society, and removed from all manner of religious instruction, to which they attach the highest importance; deprived of all succour, and without the superintendence to which they had been accustomed. Under such circumstances nothing could be expected but that they would sell their land, and generally for an inadequate consideration, since they would estimate its value by what, under the circumstances, it seemed to be worth to them. From the evidence of Mr. Morin, this appears to be so much the case, that any indication of a favourable

disposition, on the part of Government, in regard of these claims, has had no other effect than that of stimulating speculation in them, and, instead of inducing the militiaman to obtain the lands for himself, in order that he or his family might settle upon them, has only increased in some small degree the price which he could obtain for his claims.

But while the grant of land, as land being useless to the militiaman, is merely equivalent to him to a grant of some very small variable amount in money, its effects upon the Province have been most injurious. Under the claims of the militia of 1775, upwards of 230,000 acres, and under those of the last American war upwards of 217,000 acres, have been granted, by far the largest part of which is still perfectly waste and unsettled. Whole townships which have been granted in this manner, have not a single settler established upon them. In this manner it has happened that a system which was designed as a means of settling the Province, and of rewarding those who had enlisted in its defence, has proved one of the great impediments in the way of the former object, and has accomplished the latter in the smallest possible degree. There has been the maximum of injury to the Province, with the minimum of benefit to the militiamen; and a similar result must, it would appear, necessarily follow a perseverance in the same system. There is no probability that the 300,000 or 400,000 acres to which valid claims might be established, if granted in the same manner, would be settled any more than the 450,000 acres which have already been granted, or that the benefit to the militiamen would be greater in any appreciable degree. It becomes, therefore, a matter of importance in every point of view, to frame some plan by which the intentions of Government, in offering this bounty, might be carried out; by which justice may be done to the claimants, while the interests of the public are secured.

The most effectual measure for this purpose appears to be the following:—That any claim established should be considered as entitling the claimant to an amount equivalent to the value of the quantity of land awarded to him, at the average selling price of crown lands during the last ten years; and that an order for this amount should be given to him, which should be accepted as money at any sale of crown lands. In all cases the order should be delivered to the claimant himself, or, in the event of his death, to his legal representatives, or upon the production of an order, signed by him in the presence of witnesses, after due notification of the intentions of Government in all parts of the Province.

By this precaution, the militiaman would be secured as far as possible in the enjoyment of the benefit designed by Government, and only such a sale of his claim as ought in equity to be held valid, could be enforced against him.

I have the honour to be, with the highest respect,

My Lord,

Your Excellency's most obedient, humble servant,

(signed) *Chas. Buller*,

Chief Commissioner of Crown Lands and Emigration.

Quebec, 8 September 1838.

No. 5.

LETTER from Mr. *William Young* on the State of *Nova Scotia*.

My Lord, Quebec, 20 September 1838.

Letter from Mr. William Young on the State of Nova Scotia.

IN the several interviews with which my associates and myself have been honoured since our arrival in Quebec, frequent allusion has been made to the revenue and expenditure of Nova Scotia, the composition of the two councils lately organised, and the evils that are complained of in the administration of her public affairs. The statement annexed to the joint communication which we addressed yesterday to your Lordship on the main object of our mission, contains a general and pretty accurate account of the sources from which the revenue of the province is derived, and the mode in which it is expended; and I feel that it is a duty I owe to my constituents and to the liberal or popular party with whom I usually act in the Assembly, to avail myself of this opportunity of placing before your Lordship in writing, in a more distinct and permanent form than a mere verbal communication, the principal grievances which the great majority of the people anxiously desire to be reformed. There are some well-informed and upright men in our province who ridicule the idea of there being any grievances with us, and distrust the party who have proclaimed their existence, and aim at their redress. If those who deny that there are grievances, mean only to say, that there are none of such magnitude as should render the people discontented with their condition, or disturb, even for an hour, the tranquillity of the government, I concur with them to the full extent.

Abuses in Nova Scotia have never reached the same irritating or fearful height which we have witnessed in other provinces. The substantial blessings of an enlightened, and, upon the whole, an impartial and upright administration of the law, of perfect freedom of conscience, and the unfettered exercise of industry, of the absence of oppression in every form, have been long enjoyed by us, and have doubtless largely contributed in fostering that ardent attachment to the British Crown and institutions, which may be fairly said to be an universal feeling. I know not of a single individual of influence or talent, who would nor regard a severance of our connection with the mother country, and our incorporation, which would soon follow, into the American Union, with its outrages on property and real freedom, its growing democratic spirit and executive weakness, as the greatest misfortune that could befall us. Let not your Lordship, then, or the British Ministry, be misled into a belief, that there is any party in Nova Scotia which does not reverence the name, and would not uphold, at every hazard, the supremacy of England. True, we admire the enterprise, activity and public works of the United States, and would wish that they were more largely imitated in our own possessions; but the people of Nova Scotia have no desire to purchase these or any other advantages, by deserting their constitution. They do, however, desire that our public affairs in some respects should be more economically and wisely managed: and it is to these that I have now respectfully to solicit your Lordship's most favourable attention.

See Journals of 1838, fol. 445.

First. The administration of the Crown Lands is universally and most justly complained of. Before the introduction of the present system, grants could be obtained on the payment of moderate fees, which were distributed among the different officers, and reduced the necessity and amount of salaries. In this point of view, the lands yielded some, though a very inadequate, revenue to the Crown, and the country was easily and quickly settled. Improvident and enormous grants to individuals, which have been the bane of other colonies, and were not unknown to our early history, have been long unheard of among us, and the old system, though far from effective, worked well and smoothly. But the Home Government were unhappily persuaded to erect a new office, with a salary disproportioned to its duties, and a substitution of sales at an upset price for the fees on grants, and ever since there has been murmuring and discontent on every side. The officers who used to receive the fees complained that

they were deprived of their emoluments, and have increased their demands of salary; and the expense of maintaining the new office, and paying the commissioner his 500*l.* sterling a year, has swallowed up very nearly the whole proceeds. Upwards of 100,000 acres of land have been sold since 1831, and about 7,700*l.* received, of which only 1,047*l.*, as near as I can compute it, and that for the most part in the last year, has been paid into the casual revenue. This, however, is but a small portion of the evil. The young men of the colony, unable to purchase the wild lands on the terms now imposed, and who would constitute our most valuable and hardy settlers, are leaving us by hundreds, and the clearing and improvement of the country is greatly retarded. I rejoice, therefore, that your Lordship contemplates a thorough change of the system, and look to it with confidence and hope, as one of the most important benefits that will flow from your administration.

Journals of 1837,

Ib. 199. fol. 1838. App. fol. 184.

Secondly. The oppressive and systematic encroachments of the Americans upon our fisheries have attracted universal attention, and exasperated all classes. It would be vain for me to attempt a discussion of this extensive subject, which has already engaged your Excellency's notice. The question is examined in all its bearings in a Pamphlet which I had the honour of sending to Colonel C. Couper, with the Journals and other documents referred to in this letter, and your Lordship will find a great body of facts collected by a committee of the Assembly in 1837, and annexed to their report, which fully establishes the reality and extent of injuries done to our people by foreign aggressors.

Thirdly. The expense of our customs' establishment is regarded as a serious evil. Previous to 1826 the principal officers were paid by fees, and enjoyed very large incomes. When these were abolished, a proposition was made to our legislature to grant an annual sum towards the maintenance of the establishment, which was accordingly done by the Act 10 Geo. 4, c. 31, in consideration of the abolition of the fees, and of the benefit which the removal of the former burthensome restrictions would confer on the general commerce of the province. The Assembly of that day, however, is usually supposed to have made an improvident bargain, such as the present Assembly, I am sure, would never have yielded. They granted in perpetuity for the support of the customs' establishment no less a sum than 7,144*l.* 18*s.* 9*d.* currency, payable out of the Imperial duties. Besides this large amount, the establishment, as I have already mentioned,

Prov. Laws, vol. 4, fol. 57.

exhausts the whole of the Crown duties, which are understood to yield about 2,500*l.* currency. The establishment costs us, therefore, nearly, if not quite, 10,000*l.*, and it collects about 15,000*l.* worth of duties. The salaries are, many of them, enormous, and the colonial revenue is collected by a distinct department, which might easily be dispensed with, at an annual charge, including the commission of 15 per cent. paid in the out-ports, of about 2,500*l.* The duties of both departments might be as efficiently, and with more convenience to the merchant, fulfilled by one, at an annual expense of about 6,000*l.* So that in this single item a saving is quite practicable, with the approval and sanction of the British Government, of 6,500*l.* a year—a sum nearly equivalent to all that the legislature can bestow on its favourite object, the intellectual and moral improvement and education of the people.

Fourth. The Assembly has long been solicitous that every port in the province where there is a custom-house officer, should be declared a free port. The present system fosters the illicit trade which so injuriously affects our revenue, and cripples the activity of our foreign commerce. The Assembly have declared that they can see no reason to fear an equal open competition between the industry of their constituents and that of any other nation, and have earnestly petitioned the Home Government, and supported the application by very cogent arguments, that every port where a custom-house officer is stationed may be permitted to enjoy the privileges of a free port.

Fifth. The emoluments and salaries of some of the officers of government, not under the control of the legislature, are disproportioned to the means of the colony, and engender habits of expense which re-act upon the manners of the people, and hinder the accumulation of capital. The secretary of the province has 1,000*l.* sterling a year out of the casual revenue, and holds besides the lucrative office of registrar of deeds. I will not undertake to state the amount of his income; but it is plain, that it far exceeds what any officer should derive from the public funds of a young and comparatively poor colony. The opinion is gaining ground, and I entirely concur in it, that none of our public officers, even the highest, with the exception of the Governor, should have more than 1,000*l.* currency a year, and that none, except two or three of the highest, should receive more than a puisne judge. Connected with this subject is an unhappy question still open, and which all men must anxiously desire to have

finally adjusted. Certain fees have been taken by our Chief Justice and Judges of the Supreme Court, under an old ordinance of Council, which the Assembly have repeatedly attacked as illegal. On the strict constitutional ground I have no doubt they are so, though I admit that much is to be said, and plausibly and forcibly said, by the advocates of the fees. They amount, on an average, to about 500*l.* a year, and, for the sake of this sum, and the principle it is supposed to involve, we have the painful and singular anomaly of a court, highly respected for integrity as well as talent, exacting fees which the representatives of the people have denounced as contrary to law. For my own part, in consideration of these fees having been received for half a century, and, till of late years, with the implied acquiescence at least of the legislature and people, I would be willing to commute them by a reasonable allowance to the present Chief Justice and Judges. At one time, I think, the Assembly would have granted such a commutation; but nothing, I am convinced, would induce them to it now. In the debate of last session on the civil list, the majority offered, in exchange for the casual and territorial revenue, to grant permanently to Her Majesty the following salaries: To the Lieutenant-governor during his continuance in office, 3,000*l.* sterling per annum; and to any future Lieutenant-governor, 2,000*l.*; to the present Chief Justice, 850*l.* sterling her annum, without fees, during his continuance in office; and to any future Chief Justice, 750*l.* sterling; and to each of the Assistant Justices of the Supreme Court, 500*l.* sterling, without fees. They resolved also, that the provisions for the Attorney and Solicitor General, and secretary of the province, should be made by annual votes, a point on which I differed from them for the same reasons that are put so forcibly in the Report of the Canada Commissioners. I think it right also to add, that I voted against the first Resolution, as I feared it might defeat the proposed settlement, and thought the salaries somewhat lower than they ought to be.

Sixth. The majority of the House of Assembly is dissatisfied with the composition of the Executive and Legislative Councils, and the preponderance in both of interests which they conceive to be unfavourable to reform. This is the true ground, as I take it, of the discontent that is felt. The respectability and private virtues of the gentlemen who sit at the two Council Boards are admitted by all; it is of their political and personal predilections that the people complain. They desire reforming and liberal principles to be more fully

represented and advocated there, as they are in the Assembly. The majority of the House, while they appreciate and have acknowledged the anxiety of his Excellency the Lieutenant-governor to gratify their just expectations, have also expressed their dissatisfaction that the Church of England should have been suffered to retain a majority in both Councils, notwithstanding the remonstrances of the House, and the precise and explicit directions of the Colonial Secretary. Religious dissensions are happily unknown among us, and the true way to prevent their growth and increase, is to avoid conferring an inordinate power on any one sect, however worthy it may be of respect or favour. The argument in the Address of last session on this point appears to me irresistible. I have respectfully to invite your Lordship's consideration also of the Address passed by the House in the session of 1837. These documents are the authentic and deliberate expositions of the views entertained by the Assembly, and touch on most of the questions I have referred to in this letter. Had it not extended to such length, I would have been glad to introduce some remarks also on the jurisdiction and practice of the Admiralty Court, which will soon become an intolerable grievance, as some already consider it to be, and on the management of the post-office, and the Act which was passed during the last session, and which will save us, if it go into operation, about 1,000*l.* per annum. There are other reforms demanded in our local affairs, particularly in the excessive number of our common-law judges and courts, and the want of an effective and easy appeal from our other tribunals, with which I shall not trouble your Lordship, as they are within the power of our own legislature. The reforms I have taken the liberty of urging depend, for the most part, on the British Government, and I earnestly hope that they will commend themselves to your Lordship's approval. An intelligent and powerful mind cannot fail to discover their substantial justice, and the high sanction of your Lordship would greatly assist us in our endeavours to accomplish them. Several of these points have been discussed by Mr. Uniacke and myself in the presence of your confidential advisers, and I have shown the draft of this letter * to him and to my two other associates. The accuracy of the facts I have stated is, I believe, unquestionable, and I am confident that the great body of the people concur in the conclusion I have drawn from them.

I beg, therefore, in conclusion, respectfully to solicit your

* Mr. Uniacke, on reading the letter, wishes me to add, that he does not concur in it.

Lordship's powerful interposition in our behalf, and to assure your Lordship that I have written this letter purely on public grounds, being on terms of friendly intercourse with almost all the members of Her Majesty's Councils, and the officers of Government, whose emoluments, however, I consider, in many instances, higher than the province can afford.

I have, &c.
(signed) *Wm Young.*

His Excellency the
Right Honourable the Earl of Durham, Governor-general,
&c. &c. &c.

No. 6.

LETTER from the Right Rev. *A. Macdonell*, Catholic Bishop of *Kingston.*

My Lord, Quebec, 22 June 1838.

Letter from the Right Rev. A. Macdonell, Catholic Bishop of Kingston.

YOUR Excellency's arrival in these provinces, invested with more extensive powers than were ever yet entrusted to any British subject, shows the unbounded confidence which your Sovereign has been graciously pleased to repose in your Excellency's liberal and enlightened policy, and at the same time inspires the inhabitants with sanguine expectations, that those powers will be exercised to remove the grounds of the jealousies, discontents and disaffection which have occasioned already so much evil in both the Canadas, and, if allowed to continue much longer, will infallibly terminate in direful results.

A residence of 34 years in Upper Canada, and an uninterrupted intercourse during that period with a large proportion of the population of the province who are placed under my own charge, and a general acquaintance with almost all the respectable characters in both provinces, have given me opportunities of knowing the sentiments, feelings and disposition of Canadians which few others have had; and, understanding that your Excellency has expressed a desire of receiving all the information that can throw light on the causes which occasion the unfortunate differences and troubles that have existed, and still do exist in these provinces, I consider it my duty to submit respectfully, but fearlessly and unhesitatingly, to your Excellency, such information as my opportunities have enabled me to acquire.

The population of Upper Canada is composed of Protestants of the Church of England, Methodists, Presbyterians, and

Scots Highlanders, who joined the royal standard during the revolutionary war with the United States, and are called U. E. Loyalists, and their descendents, and the disbanded soldiers of the First Glengarry Fencible regiment, whom I conducted unto this province with an order from the home government to give them a grant of land; French Canadians, who inhabit the western district, and Irish emigrants, who have been pouring annually in great numbers into the province ever since the conclusion of the last war.

All the French Canadians, and a great majority of the Irish emigrants and Scotch Highlanders, are Catholics. All the Irish Catholics, and the whole of the Scots Highlanders, have given the most unequivocal proofs of their loyalty and attachment to the British constitution, by rushing to arms at the first call of the Government. The Scots Highlanders, not satisfied with mustering to the number of 2,000 men in their own province, volunteered their services to Lower Canada, and two corps of them served on the frontier until the excitement occasioned by the threats of the rebels had entirely subsided.

So successful were the exhortations of the Catholic clergy to their respective flocks, that scarcely any of them was implicated in the rebellion. The leaders and chief contrivers of the late outbreak were Protestants, Presbyterians and Methodists; but the majority of the rebels were Methodists and Presbyterians. Such of the Protestants as became disaffected and inimical to the Government, are so from jealousy and disappointment at seeing a certain party in and about Toronto assume too much power, and exercise what they think too much influence over the different Lieutenant-governors; so much so, that there is hardly a situation of trust or emolument that is not engrossed by themselves and their friends.

The Methodists and Presbyterians have become disaffected from their dread and abhorrence of a dominant church, and they cannot be persuaded but the establishment of rectories, and the postponement of the distribution of the clergy reserves, are preludes to a system which they are fully determined to resist to the utmost of their power; and it is in vain to expect that peace or permanent tranquillity can be established in the province until these questions are finally settled.

The warm and animated discussion which has taken place between the archdeacon of Toronto and the Honourable William Morris, of Perth, in reference to the right of the Presbyterians to a share of the clergy reserves, has raised

a general excitement among the Presbyterians, which it will take a long time to allay, and which may terminate in unpleasant, if not dangerous consequences.

The Catholics, who compose a great proportion of the population of Upper Canada, are either Irish emigrants, Scots Highlanders, or French Canadians. All those, although not disaffected to the Government, are far from being satisfied. The Irish arrived in this county with their minds under a strong irritation, arising from the pressure of tithe exactions, rack-rents in their own country, and, above all, their mortal hatred to Orangeism, which they find rapidly spreading over this province: they are with great difficulty persuaded that they will meet with justice and fair play in Canada, and are thus predisposed to receive every unfavourable impression which the exaggerated misrepresentations of the disaffected, who are most anxious to win them over to their party, choose to make upon them.

Unable to build places of worship for themselves, or educate their children, they, as well as the Scots Highlanders, feel greatly disappointed at being excluded from their share of the clergy reserves, and at not receiving any assistance from Government for the education of their children, although the Methodists obtained this very year a grant of 4,100*l.* towards their seminary at Cobourgh.

There are abundant funds for education in the province, if the school lands were disposed of, and the proceeds applied to the support of district and common schools. The withholding of those funds, and of the clergy reserves, from the purposes for which they were intended, and the spread of the Orange system, are the principal, if not the only, grounds of discontent among all denominations in Upper Canada.

The Scots having contributed so materially to the conquest of the Canadas, and to the defence of them on every occasion when any attempt had been made to wrest them from the British crown, feel indignant that they should be deprived of all the rights and advantages which others enjoy who have not the same claims that they themselves have.

I humbly beg leave to submit to your Excellency a further claim, which the Catholic clergy of this diocese conceive to have on the Government, on account of the charge they have for many years past taken of the various tribes of Indians who inhabit different parts of this province, and of those who this year and last summer emigrated from the territories of the United States to the Manatoline Islands in Lake Huron. The Methodists, who have taken great pains to convert

these simple people to their religious creed, have so disgusted the Indians by their interference with temporal concerns, contrary to the practice of the Catholic clergy, who confine themselves entirely to spiritual matters, that they have been most urgent to get Catholic priests among them; and I have so far complied with their solicitations, as to appoint two clergymen, who speak the Indian language, to Penetangueshine and the Manatoline Islands; but as the Indians themselves can afford nothing towards the support of those clergymen, and my salary, although not half the amount of that which the Catholic Bishop of Quebec receives from the British Government, being burthened with the expenses of the education of 14 students for the ecclesiastical state, it is impossible for me to afford them any assistance, and the only means they have of supporting life in these remote and dreary regions, where their duty calls them to spend their time among savages, is the slender quota that falls to their share of the 1,000*l.* allowed by Government to all the Catholic clergy of Upper Canada.

The Jesuit property in Lower Canada had been bequeathed by the original donors for the purpose of instructing the Indians in the Catholic religion; and as that duty now principally devolves upon the Catholic clergy of Upper Canada, I should hope that your Excellency would see the justice and propriety of ordering at least a share of that property to go towards supplying the Indians with religious instruction, and thus fulfilling the original intention of the donors.

I have, &c.

Alexander Macdonell,
Bishop of Kingston, Upper Canada.

No. 9.

Address from the Constitutional Association of *Montreal* to the Inhabitants of *British America.*

Fellow Countrymen,

When an industrious population, after years of suffering, are aroused to a sense of danger, by renewed attacks upon their rights and liberties, an appeal to those of kindred blood, animated by the same spirit, and allied by a communion of interests, can excite no surprise, and requires no justification. Address from the Constitutional Association of Montreal

Long and patiently have the population of British and

to the inhabitants of British America.

Irish descent in Lower Canada endured evils of no ordinary description, relying on the interposition of the Imperial Government for relief. Deceived in their fondly-cherished trust, they are impelled to seek from their own energies that protection which has been withheld by the power on whose justice they reposed.

For half a century they have been subjected to the domination of a party whose policy has been, to retain the distinguishing attributes of a foreign race, and to crush in others that spirit of enterprise which they are unable or unwilling to emulate. During that period, a population descended from the same stock with ourselves, have covered a continent with the smiling monuments of their agricultural industry. Upper Canada and the United States bear ample testimony of the flood-tide of prosperity, the result of unrestricted enterprise and of equitable laws, which has rewarded their efforts. Lower Canada, where another race predominates, presents a solitary exception to this general march of improvement. There, surrounded by forests inviting the industry of man, and offering a rich reward to his labour, an illiterate people, opposed to improvements, have compressed their growing numbers almost within the boundaries of the original settlements, and present in their laws, their mode of agriculture, and peculiar customs, a not unfaithful picture of France in the seventeenth century. There, also, may be witnessed the humiliating spectacle of a rural population not unfrequently necessitated to implore eleemosynary relief from the Legislature of the country.

It were incredible to suppose that a minority, constituting nearly one-third of the entire population, imbued with the same ardour for improvements that honourably distinguishes their race throughout the North American continent, and possessing the undisputed control of all the great interests of the colony, would resign themselves to the benumbing sway of a majority, differing from them so essentially on all important points, whilst any mode of deliverance was open to their choice. Nor would supineness or indifference on their part produce a corresponding change in their opponents, or mitigate the relentless persecution with which they have been visited. The deep-rooted hostility excited by the French leaders against those of different origin, which has led to the perpetration of outrages on persons and property, and destroyed confidence in juries, who have been taught to regard us as their foes, has extended its pernicious influence beyond the limits of Lower Canada. Upper Canada, repulsed

in her endeavours to open a direct channel of communication to the sea, has been driven to cultivate commercial relations with the United States, whose policy is more congenial with her own. Nova Scotia and New Brunswick will learn, with indignant surprise, that the destruction of their most important interest is countenanced and supported by the Assembly of this province.

A French majority in one province has caused these accumulated evils,—a British majority in the United Provinces will compel their removal.

If it be the desire of the French Canadians to isolate themselves from the other subjects of the Empire, by cherishing the language and manners of a country which stands to them in the relation of a foreign power, the effects of such a prejudice will chiefly be felt by themselves, and may be left for correction to the hand of time; but, when national feeling is exhibited in an active opposition to the general interests of the British American Provinces, when immigration is checked, the settlement of the country retarded, and the interests of commerce sacrificed, to the visionary scheme of establishing a French power; it becomes the solemn duty of the entire British population to resist proceedings so pregnant with evil. Let it not be said that a million of freemen permitted their rights to be invaded, and their onward course impeded, by a faction which already recoils in alarm from the contest it has rashly provoked.

Connected as are the Provinces of British America by a chain of rivers and lakes, affording the means of creating an uninterrupted water communication between their extremities, at a comparatively small expense; possessing within themselves the elements of an extensive trade by the interchange of those products which are peculiar to each, and forming parts of the same Empire, they have the undoubted right to require that these advantages shall not be sacrificed by the inertness or the mistaken policy of any one State; more especially when, as in the case of Lower Canada, that State, from geographical position, exercises a preponderating influence on the prosperity of all.

The facts which have been made public in two addresses, emanating from this Association, conclusively establish the want of education among the French population, their subserviency to their political leaders, and the hostility of those leaders to the population of British and Irish descent. Many additional illustrations of their hostile policy might be adduced.

At a time when men of all political parties in the sister provinces are united in opposing the contemplated change in the timber duties, the Assembly of this province, far from lending their assistance, have countenanced the attack, by recognizing as their agent in England an individual who is distinguished by his advocacy of the Baltic interests, and his active opposition to the colonial trade. To aid in the prosecution of this design, they have not scrupled to appropriate a part of the provincial funds (obtained under the pretext of defraying their contingent expenses) to reward their agent, and to circulate through the British press statements that are calculated to mislead the public mind; thus gratifying their national animosity, by lending a willing aid to ruin the shipping and mercantile interests of the British American provinces, and to prevent the influx of immigrants from the British Isles, who are brought to the Colonies at a trifling cost by the vessels engaged in the timber trade.

Upper Canada is honourably distinguished for works completed and in progress, remarkable for their magnitude and for the extensiveness of their destined utility. The St. Lawrence Canal, at this moment in active progress, will complete an uninterrupted navigation for vessels of considerable burthen from the upper lakes to the line dividing that province from Lower Canada; but at that point the spirit of British enterprise encounters the influence of French domination; the vast design of rendering the remotest of the inland seas accessible to vessels from the ocean, is there frustrated by the anti-commercial policy of the French leaders. We look in vain to their proceedings for any manifestation of a desire to co-operate in the great work of public improvement which animates, as with one spirit, the entire North American population of British descent; nor is their adverse disposition less visible in their opposition to other important designs; they either refuse to grant charters to carry into effect works of acknowledged public utility, or, when after repeated and earnest applications, charters are obtained, they are clogged with restrictions of an unusual character, in the hope of rendering them inoperative.

In all new countries the deficiency of capital proves a serious impediment to the exertions of the enterprising and industrious, and it would be among the first duties of a wise Legislature to invite the introduction of foreign capital, by the adoption of an equitable system of law, that would inspire confidence in personal and in landed securities. In Lower

Canada, from the absence of Offices for the Registration of real estate, and from the system of secret and general mortgages, not only is foreign capital excluded, but the Colony is impoverished by the withdrawal of funds for profitable and secure investment in other countries. In tracing the motive of resistance to a measure that more than any other would advance the public welfare, we again encounter the pernicious influence of French exclusiveness. A general distrust of the titles and securities of landed estate is suffered to exist, in order to prevent the acquisition of real property by immigrants from the British Isles.

This spirit of exclusiveness, which betrays itself in all the proceedings of the Assembly, disfigures even those measures, which, it might reasonably be expected, would inspire sentiments of a more lofty and generous nature. Although the British Act of the 14 Geo. III. which confirmed the right of the French Clergy to tithes, declared, most probably for that very reason, that the religious communities should not hold estates, they continue in the undisturbed possession of tracts of land, exceeding fifteen hundred square miles in extent, besides possessing property of great value in Quebec, Montreal, and elsewhere. In addition to the revenues derived from these possessions, the Assembly annually appropriates large sums of money out of the Provincial revenues for the support of those communities, and for the establishment of institutions rigidly and exclusively French, whilst to other institutions on a liberal foundation, affording relief to all, without distinction of origin or creed, a fair participation of legislative aid has been refused.

It is to 'the great body of the people' thus characterized, that his Excellency the Earl of Gosford, the representative of a British King and the head of the Commission deputed to inquire into our complaints, has declared that all future appointments to office shall be made acceptable.

A Legislative Council constituted on such a principle, would be but a counterpart of the Assembly; it might, and no doubt would, relieve the Executive from the odium of sanctioning the illegal appropriation of a part of the provincial revenues, by the mere vote of the Assembly; but it would not prevent the same misapplication of the public funds being effected by bill, which is now accomplished by an address to the head of the Administration.

A Government thus conducted, would forfeit all title to our confidence, would be regarded but as an instrument to secure the domination of a party, and the brief period of its

duration would be marked by scenes of outrage, and by difficulties of no ordinary description.

The French leaders, if we are to credit their reiterated assertions, entertain an attachment so deep, so absorbing, for elective institutions, that they would at once confer that important privilege, to its fullest extent, without reference to previous habits, education, or political dissensions. How much of this ardour may have been called forth by a desire to establish French ascendancy, and to depress British interests, may fairly be deduced from a review of their past proceedings. Without discussing the question of elective institutions, which, it is obvious, cannot be introduced to the extent demanded by the Assembly, under the existing political relations of the colony, which relations we are resolute to maintain, we distinctly aver, that we are not influenced by idle apprehensions of a government of the people, and for the people; but it must be emphatically a government of 'the people', truly represented, and not that of a French faction: the government of an educated and independent race, attached to the principles of civil and religious liberty; and not that of an uninformed population, striving for domination, and seeking to perpetuate in America the institutions of feudal Europe.

To the people of the sister Colonies we appeal, earnestly recommending the adoption of measures for assembling at some central point a Congress of Deputies from all the Provinces of British North America. A British American Congress, possessing strength from union, and wisdom from counsel, by the irresistible weight of its moral influence, would supersede those other remedial measures which are the last resource of an insulted and oppressed community. On it would devolve the solemn duty, calmly to deliberate on all matters affecting the common weal, and firmly to resist all attempts to invade the rights, or impair the interests of the United Provinces.

In submitting a brief recapitulation of the objects of the Constitutional Association, it may not be misplaced to offer a few observations explanatory of the position of parties in Lower Canada, and of the sentiments of the British population towards their fellow-subjects of French origin.

The moral guilt of exciting national hostility undoubtedly rests with the French leaders, who alone benefit by the distracted state of the country; but the facility with which the French peasantry have received these impressions, and the unanimity with which they support the aggressive policy of their leaders, render them, although less culpable, yet equally

determined opponents of our rights and our liberties. Unhappily, their want of education prevents a direct appeal being made, through the press, to their judgment; but those of their countrymen who are not blinded by the infatuation of party, who possess education to comprehend, and opportunity to make known, the sentiments of the British population, may be led to reflect upon the consequences that must result from their present delusion. Should the admonition be disregarded, on them let the responsibility rest.

The province of Lower Canada, whether regarded as a part of the British Empire, or of the great North American family, is evidently destined to receive the impress of national character from those States by which she is surrounded. An obstinate rejection of all measures, having for their aim the gradual removal of those peculiarities which distinguish the population of French origin, may retard, for a time, an inevitable event, but will certainly hasten the introduction of changes of a more abrupt and decisive character.

A dispassionate examination of the changes required by the British population will satisfy all unprejudiced men that they are adapted to the general interests of society, are liberal and comprehensive in their character, and unconnected with party objects.

To relieve landed estate from the servitudes and exactions of feudal law;

To introduce Registry Offices, and put an end to the iniquitous frauds that grow out of the present system;

To promote works of public improvement;

To encourage agriculture, and protect commerce;

To recognize an equality of rights among all classes;

To resist the domination of sect or party, and to establish a general system of education divested of sectarian tests:—These are our objects and our demands; they are based on truth, are essential to national prosperity and to individual security; they admit of no compromise, and from them we will not recede.

The threatening aspect of the times demands action; neutrality, the usual resource of ordinary minds, will not be attended by an immunity from danger; it must remain with the population of French origin to decide, whether, by continuing to support the leaders they have hitherto selected, they are to be regarded as hostile to our just claims; or, by uniting with their fellow-subjects of British origin, they will compel the introduction of salutary reforms, consign to their native insignificance the few individuals who alone profit by

the present system of misrule, and by repudiating ancient prejudices, and exclusive pretensions, place themselves in accordance with the spirit of the age.

To us, it is in one respect a matter of indifference what their decision may be. The principles we espouse are identified with the happiness of the human race ; they have taken root with our language in all quarters of the globe ; and wherever that language is spoken, there shall we meet encouragement, and thence shall we derive force.

Although Lower Canada presents the strange spectacle of a British Government bestowing its confidence on men who have openly avowed their hostility to England, and their desire to effect a separation from the Empire ; although, by the connivance of that Government, the provincial funds have been illegally applied to reward French agitators, to support French journals, and to pay French agents ; yet do we feel the proud conviction, that the energies of Britons will rise superior to the emergency, and that, despite an unnatural coalition, the banners of our country will continue to wave over a British Province.

The voice of supplication has been unheeded amidst the insolent clamours of faction. United British America, assuming an attitude alike removed from menace or from fear, will proclaim her wrongs, assert her rights, and claim from the Imperial Parliament that interposition which shall remove existing grounds of complaint, and carry with it a sufficient guarantee against future aggressions.

By order of the Executive Committee of the
Montreal Constitutional Association.

William Robertson, Chairman.

J. Guthrie Scott, Secretary,
Montreal, January 1836.

APPENDIX B.

ORDERED TO BE PRINTED MARCH 5, 1839.

CONTENTS.

Commission by the Earl of Durham, appointing Charles Buller, Esq., to proceed with the utmost dispatch to inquire into the past and present methods of disposing of Waste Lands, Woods, Forests and other Domains and Hereditaments the Property of the Crown in Lower Canada, &c.

Circular Despatches from the Governor-general to the respective Lieutenant-governors of Her Majesty's Colonies in North America.

Report to his Excellency the Governor-general.

*Minutes of Evidence.

[The section marked with an asterisk has not been reprinted.]

No. 1.

COMMISSION.

Province of Lower Canada.

DURHAM.

VICTORIA by the GRACE OF GOD, of the United Kingdom of *Great Britain* and *Ireland*, Queen, Defender of the Faith.

To CHARLES BULLER, Greeting :—

WHEREAS it is highly expedient and desirable that the disposal of the extensive tracts of waste land, the property of the Crown, in Our Provinces of Lower Canada, Upper Canada, Nova Scotia, and New Brunswick, and our islands of Prince Edward and Newfoundland, should be placed upon such a footing as may most effectually conduce to the increase of population and wealth in the said provinces and islands, and the general prosperity thereof, and in particular to greatly increased emigration from the mother country, both of capitalists and labourers, as permanent settlers ; to the end that, while the vast but imperfectly developed resources of the said provinces and islands should as soon as possible be made fully productive, a more intimate connexion between Britain and her colonial empire in North America, founded on common interests and productive of mutual advantages, may be

established and permanently secured. And whereas We have ordered and directed each of Our Lieutenant-governors of Our Provinces of Upper Canada, Nova Scotia, and New Brunswick, and our islands of Prince Edward and Newfoundland respectively, to affix the Great Seal of the province or island of which each is respectively Lieutenant-governor, to a commission addressed by Us to you, to the like effect and containing the like powers and authorities, for inquiry, touching the waste lands, the property of the Crown, in each such province or island respectively, as are hereinafter contained: Know ye, therefore, that We, reposing great trust in your zeal, ability, and discretion, have nominated, constituted and appointed, and by these presents do nominate, constitute and appoint you the said Charles Buller, to proceed with the utmost despatch to inquire into the past and present methods of disposing of waste lands, woods, forests and other domains and hereditaments, the property of the Crown, in our Province of Lower Canada, and to collect information respecting the operation thereof in regard to the advancement of our said Province, and in particular to the promotion of emigration thereto from the mother country. And Our further will and pleasure is that you, after due examination of the premises, do and shall, as soon as conveniently may be, report to us under your hand and seal, what you shall find touching or concerning the premises upon such inquiry as aforesaid, and also that you shall suggest such alterations or modifications of the laws and regulations at present in force, as may appear likely to promote the objects aforesaid. And for the better discovery of the truth in the premises, We do by these presents give and grant to you full power and authority to call before you such and so many of the officers of the Crown Lands Department and agents for emigrants, in our said Province of Lower Canada, and such other officers of the Crown, and other persons, as you shall judge necessary, by whom you may be the better informed of the truth in the premises, and to inquire of the premises and every part thereof, by all other lawful ways and means whatsoever. And We do also give and grant to you full power and authority to cause all and singular the officers aforesaid, in our said Province of Lower Canada, or any other person or persons having in their custody any records, orders, regulations, books, papers or other writings relating to or in any wise connected with the premises, to bring and produce the same before you. And for your assistance in the due execution of this our Commission, We do hereby authorize you to nominate and appoint such person

or persons as you shall think fit to be assistant commissioner, or assistant commissioners, for the purposes aforesaid, or any of them, and to delegate to him or them such and so many of the powers hereinbefore vested in you as may seem expedient. And Our will is, and We do hereby direct and ordain, that the person or persons so nominated by you shall possess and exercise any powers and authorities so as aforesaid delegated to him or them, in as full and ample a manner as the same are possessed and may be exercised by you under the authority of these presents. And We do hereby further authorize and empower you, at your discretion, to appoint such person as secretary to this Our commission, as to you shall seem proper, and to frame such temporary rules, orders, and regulations with regard to the manner of disposing of such Crown lands in Our said Province of Lower Canada, as may to you appear expedient, and from time to time, at such like discretion, to alter and vary the same, due regard being had in all such rules, orders, and regulations, to any Provincial Act or Acts, and to any Royal instructions now in force in Our said Province of Lower Canada, touching or concerning the disposal of the said waste lands or any part thereof. And We do hereby further authorize and empower you to give instructions to the several officers of the Crown lands department and agents for emigrants in Our said Province, as to the performance of the duties of their respective offices, subject, nevertheless, to all such Provincial Acts or Royal instructions as aforesaid ; which instructions shall be in all respects binding upon the officer or officers to whom the same shall be respectively addressed.

In testimony whereof We have caused these our letters to be made patent and the Great Seal of our said Province of Lower Canada to be affixed thereto.

Witness our right trusty and right well beloved John George Earl of Durham, Viscount Lambton, &c. &c. Knight Grand Cross of the Most Honourable Military Order of the Bath, one of our Most Honourable Privy Council, and Governor-general, Vice-Admiral and Captain General of all our Provinces within and adjacent to the Continent of North America, &c. &c. &c. &c.

At our Castle of St. Lewis, in Our City of Quebec, in Our said Province of Lower Canada, the 18th day of June, in the year of our Lord 1838, and in the first year of Our Reign. (signed) *D. Daly*, Secretary.

No. 2.

CIRCULAR DESPATCHES from his Excellency the Governor-General to the respective Lieutenant-Governors of Her Majesty's Colonies in *North America*.

Sir, Castle of St. Lewis, Quebec, 18 June 1838.

IN the exercise of the powers vested in me as Governor-general of Her Majesty's colonies in North America, and with a view to the permanent establishment of an improved system in the disposal of waste lands, the property of the Crown in those colonies, and the promotion of emigration thereto upon the most extensive scale that circumstances will admit, I have prepared a Commission, directing an immediate inquiry into the subject, for each of the provinces and islands comprised in my general government; and also authorizing the commissioner therein named to issue temporary rules and regulations for the disposal of Crown lands in each colony, and to give instructions to the officers of the Crown lands department as to the performance of their duties.

I enclose the commission as prepared for the province of Upper Canada, and have to direct that you will cause the Great Seal of that province to be immediately affixed thereto, and that the commission, together with a copy of this despatch, may be published in the usual manner.

As one of the incidental, though not least desirable results of an improved system in the disposal of lands, the property of the Crown, may, I hope, be a very considerable increase in the value of all lands which have become private property; and as the expectation of such a result might lead to applications for grants of land upon the terms now in force to such an extent as should defeat, or at least seriously impede, the most beneficial operation of the improved system, and especially the very desirable result above mentioned, I have also to instruct you, that until further directions from me, you will, so far as it may be in your discretion under any Provincial Act, or Royal instructions, or otherwise, abstain from alienating any waste lands the property of the Crown. You may rely on receiving those further directions in so short a time as to prevent any inconvenience from the present suspension of your discretionary powers in this respect.

I have, &c.

His Excellency, &c. &c. (signed) *Durham.*

Sir, Castle of St. Lewis, Quebec, 30 June 1838.

Referring to my despatch of the 18th instant, on the subject of Crown lands and emigration, I have now to explain to you more fully the views with which I thought it indispensable to require your co-operation in the measures which I propose to adopt for the purpose of improvement and emigration in Her Majesty's North American colonies.

In the first place, I am desirous to draw your attention to an extract, which is enclosed, from a despatch which I have addressed to Her Majesty's Principal Secretary of State for the Colonies on this subject; whereby you will perceive the great importance which I attach to such an inquiry for all the colonies, with a view to the adoption of a permanent and uniform system.

But it is chiefly because I fear, that without some such precaution the announcement of this inquiry might lead to a sudden and most mischievous alienation of public property, that I have requested you, so far as your discretionary powers would admit, to preserve the public property for the most effectual attainment of a great public purpose. The only serious obstacle, as it appears to me, with which Government would have to contend, in seeking to render the Crown lands productive of a great revenue, is the very large proportion of granted lands which remain in a wild state; and this obstacle, whatever may be its present force, would of course be increased if much more Crown land were alienated, without provisions for its cultivation far more effectual than any that have hitherto been tried. On this account only, I should be glad if it were possible to put a stop to all further grants for the present.

But as this is not possible, inasmuch as laws or regulations to the contrary are in full force, I must be content with interposing, for the present, all such obstacles to the further alienation of Crown property, as may depend on the discretionary powers of the different governments under such laws and regulations. In pursuance of this view of the subject, I have to desire that, in the exercise of such discretionary powers, you will, as far as possible, rather impede than facilitate the alienation of Crown property, and more especially any alienation except for the very highest price and most ready payment that it may be lawful for you to require.

I have, &c.

His Excellency, &c. &c. &c. (signed) *Durham.*

PUBLIC LANDS AND EMIGRATION.

REPORT to his Excellency the Governor-General.

My Lord,

HAVING completed the inquiry directed by the five several Commissions addressed to me by your Excellency, in respect of the Colonies of Lower Canada, Upper Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, as to the manner in which waste lands, the property of the Crown, have been disposed of within the same, I have the honour to lay before your Excellency the evidence which has been taken upon the subject of that inquiry, and in conformity with those Commissions, to suggest the improvements which seem to me desirable.

The inquiry directed by your Excellency differed in one very essential particular from those that have been previously made under the authority or for the information of the Government. All former inquiries appear to have been confined to the actual condition of the land yet remaining at the disposal of the Crown, without any reference to the character or the results of former proceedings in relation to the land which had been already disposed of. By this limitation of the subject of inquiry, however, the practical utility of the investigation was reduced to a very small amount; and any conclusions to be drawn from the facts ascertained were liable to serious modifications, from circumstances which had been entirely overlooked. A very brief examination indeed was sufficient to convince me that any information I might obtain, with respect solely to the remaining property of the Crown in the wild lands of these Provinces, must be necessarily incomplete and fallacious. I not merely found that the amount of this property was, in most colonies, altogether insignificant in comparison with the wild lands which had become private property; but I also discovered that the value of the public lands still undisposed of was entirely dependent upon the state of the appropriated lands of the colonies. It would have been useless to ascertain merely how many thousands or millions of acres of fertile land yet remain at the disposal of the Crown in these Provinces when the success of any attempt to turn them to account must be contingent upon the proceedings adopted by the proprietors of that land over which the Crown has no control. The neglect of this consideration has led to great practical errors in the measures hitherto adopted to promote emigration and the acquisition

and settlement of public lands. By withdrawing attention from every part of the colonies, except that which belonged to the Crown, it has led the Government to act as though this were the whole, or as though the situation and condition of the remainder might be safely disregarded. Acting under this impression, the Government has induced many persons to emigrate to those colonies by the offer of land upon which to settle, although the land thus promised was absolutely worthless for all purposes of cultivation, on account of the vast tracts of waste granted land that were interposed between the new grant and the settled districts of the colony. Of the persons to whom land has been thus offered, many have wasted their property in attempting to settle upon their grants; and the remainder have allowed their land to remain in a wild state, because they felt that no endeavours to reclaim it from the wilderness could be successful. These evils might probably have been avoided, if, at the time when Government instituted the inquiries previously referred to, it had directed its attention to the waste granted as well as to the waste ungranted lands in the Province. In order that similar errors may be avoided for the future, an inquiry into the nature and operation of previous methods of disposing of public lands must precede any suggestions as to the method to be pursued with regard to that which still remains undisposed of.

This course was also rendered expedient by another consideration. Looking upon these Provinces as fields for British colonization, it became obvious that their value, in this respect, depended less upon the measures which might be adopted for the future disposal of the public lands, than upon those which were employed to remedy the evils of former practices. In Upper Canada, for instance, to which by far the greater portion of emigration has of late years been directed, and which has been selected as the scene of more than one experiment in colonization by former administrations, very little more than a seventeenth part of the surveyed land remains at the disposal of the Crown. The remaining sixteen parts have been long since granted or appropriated; but of this granted land very little more than a tenth, in the whole, is occupied by settlers. This colony, having reference to the circumstances of soil, climate, and geographical position, is probably the most valuable portion of all the colonial possessions of the British empire upon the North American continent. In addition to a soil better adapted for the raising of grain than almost any other portion of that continent, it is so placed as to form the natural channel through which nearly all the

trade of the rapidly-increasing States of the west would pass. By an outlay quite inconsiderable in comparison with the results to be obtained, a practicable water communication might be established from Lake Huron, which would shorten, by more than 300 miles, the distance from that lake to the ocean. The natural facilities of communication too, by means of the lakes by which the Province is bounded on its southern and western frontier, and the River Ottawa, which forms its north-eastern boundary, are probably superior to those possessed by any tract of country of similar extent in North America. Were it adequately settled, it could scarcely fail to be one of the most thriving countries in the new world. At present, with the greater part of its soil unoccupied, and with a population widely scattered over its surface, it is certainly one of the least thriving ; and this in spite of an emigration unprecedented for the number and wealth of the emigrants. And all of its great natural advantages are altogether unavailing for public or national objects. The Government of the United Kingdom, by the profuse grants which it has made or sanctioned, has closed against its own subjects by far the larger portion of this most valuable colony. But, unless this Province is to be practically abandoned, and all the benefits that might be derived from its possession, as a home for the destitute population of the empire, and a market for the products of British industry, are to be relinquished, the attention of Government must be directed rather to the land of which it has disposed than to that which remains at its disposal ; and it will be necessary to adopt means to turn the former to account, before framing plans for the wiser and more profitable management of the latter.

The case of Upper Canada is the case of all the Provinces. In some the proportion of land remaining at the disposal of the Government is greater, and in others less, than in that colony ; but in every Province that which remains is valueless, so long as that which has been granted is allowed to remain unimproved. In every Province the disposal of the public land, which in new countries is the most important of all the functions of Government, must be suspended for a period of indefinite duration ; or, concurrently with the measures proposed for the purpose, means must be taken to remove the obstacles to progress, occasioned by the manner in which that function has been hitherto exercised. The inquiries directed by your Excellency form the appropriate and necessary foundation for any proceedings intended to accomplish this object.

Before I proceed to detail, for your Excellency's information, the results of the investigations which I instituted, and the remedial measures which this investigation has suggested, it is expedient that I should advert to one topic, of very considerable importance, connected with the subject. The measures which I shall have to propose are of a character to demand the exercise of the powers of the Imperial Legislature; but they are, at the same time, such as that Legislature may perhaps shrink from adopting. It may be deemed that they involve too great an interference with the property of individuals, and with the rights of the provincial legislatures, to render their adoption safe or just; and it may be argued that the subject is one which appertains of right to the colonies, and upon which they alone ought to legislate. I shall hereafter, when describing the nature of those measures, and the grounds upon which they rest, advert to the particular reasons which induce me to imagine that they cannot be advantageously or effectually carried out by any other than the supreme and central authority of the empire; but, independently of those reasons, the present appears to me to be a case in which it is the plain duty of the Imperial Legislature to interfere. It is not merely that the evils in all the colonies are similar in their nature and their origin, and requiring the same remedy; nor that it is for the interests of each of these colonies that in all an uniform system should be adopted, so that the results of one system in one colony may not be counteracted by the operation of another system in one or more of the neighbouring colonies; nor that the nature of the only adequate remedy is such as to require a central control, and some efficient guarantee for its permanency; and that therefore upon all these grounds the interests of the colonies require that the supreme and central authority of the empire should interpose;—but higher interests than those of the colonies, the interests of the empire of which they form a part, demand that Parliament should establish at once, and permanently, a well-considered and uniform system. The waste lands of the colonies are the property, not merely of the colony, but of the empire, and ought to be administered for imperial, not merely for colonial, purposes. And in whatever measures may be adopted to promote emigration, or facilitate settlement, the interests of the empire are involved, and should be consulted as much as those of the colonies.

It is true that hitherto, while in name the property of the Crown, and under the control of an English minister, these lands have been in effect administered by colonial authorities

for purely colonial purposes. It was indeed impossible that it should be otherwise. The execution of the instructions from time to time issued by successive Secretaries of State, or Lords of the Treasury, has of necessity been entrusted to those who, in the colonies, were the peculiar representatives of the English Crown; the Governor acting with the advice of his Executive Council. But the power nominally given to the Governor vested in effect entirely in his Council; and the members of that Council, being residents in the colony, having interests of their own to promote, or friends whom they desired to benefit, or it may be enemies whom they were willing to injure, have uniformly exercised their power for local or personal objects, unchecked by a control, which in this respect could only be nominal. Some recent proceedings of the Home Government would seem also almost to have assumed, that the practice thus pursued was right in principle, though it might be wrongly carried out, since the Government has offered to relinquish to the Colonial Legislature the future control of these lands, or at least of the funds arising from their disposal. It still, however, appears that the principle, no less than the working of the former method, was erroneous. There can surely be nothing in the fact, that the Crown has granted to one person, or to any number of persons, a certain portion of land in any colony which can give to those persons any right to dispose of the land which has not been granted to them: but rather the first grantees, having had their share of the land, are less entitled to any voice in the disposal of the remainder than the other citizens of the empire. The only rights which they can possess are of precisely the same character and extent as those possessed by any other subject of the Crown; a right to demand that these lands shall be administered in such a manner as to promote the prosperity of the colony, and to advance the interests of the empire. These objects, properly regarded, are identical, though experience has amply shown that the one may be pursued at the expense of the other. It is for the Imperial Parliament to reconcile these different interests, and by providing for the greatest development of the resources of the colonies, to enable them to offer a market for the manufactures, and a home for the surplus population of the United Kingdom. For this purpose the acquisition of land in the colonies should be facilitated, and the funds produced by their sale should be employed, not merely in the execution of the public works, which are now so essential, but in encouraging and providing for an extensive emigration. The funds thus produced would then be

applied to purposes in which the mother country and the colonies would be equally interested.

And the same reasons exist for vesting in the Imperial Parliament the application of remedies for past mismanagement in the disposal of these lands. I should be far from recommending any needless interference with merely local matters, which in almost every case are most effectually provided for by those who are immediately conversant with them. This, however, is not merely a local matter. If regarded solely as it affects the present inhabitants of the colonies it is a matter of comparative unimportance. The present position of these countries, in reference to their unoccupied land, derives its significance and import from the fact, that it not merely retards the prosperity of the thousands by whom they are now peopled, but that it prevents the millions, to whom they might eventually afford an asylum, from enjoying the advantages to which they are entitled. And without desiring to undervalue the importance of these possessions, I may perhaps venture to say, that if Parliament will not interpose its authority for the accomplishment of these objects, if it will not devise means of cure for the evils which the Imperial Government has caused or permitted, and at the same time provide effectual securities against similar evils for the future, the North American Provinces must be nearly valueless to the empire.

I am induced to believe that this view of the subject is entertained by the more numerous and intelligent part of the colonists themselves. The demands made by the Assemblies of Upper Canada and New Brunswick to be invested with the control of this property were not founded upon any assertion of the separate and independent right of the colony to such control. It was admitted by many of those who took the lead in urging this claim, that the administration of the property belonged of right to the Imperial Legislature. But when that Legislature refused or neglected to exercise its rights, and tacitly delegated its powers to colonial authorities, it was then demanded, and with much apparent reasonableness, that the colonial authority exercising these powers should be the legislature of the Province, and not an irresponsible executive. The colonists however would, I believe, for the most part acquiesce, not merely willingly, but even gratefully, in any measure of the Imperial Parliament asserting and exercising its paramount right, so as to secure the accomplishment of those important objects which can be but imperfectly effected by a colonial legislature.

It must also, I think, be admitted, that the view entertained by the Colonial Assemblies, to which I have just referred, is well founded. And while in all the measures I shall have to recommend, I have proceeded upon the assumption that the Imperial Legislature will exercise its undoubted rights, I am also bound to recommend, that in the event of such a course not being deemed expedient, the whole control of the property should be vested in the most ample and unconditional manner in the Colonial Legislature. This is required by every principle of justice. The United Kingdom has suffered only negatively by the malpractices which have been permitted under previous systems. The advantages to be derived from the possession of colonies, for the sake of which chiefly, if not alone, it is wise to incur the expense of founding and defending them, have, under the existing system, been enjoyed by Great Britain in a very limited and partial degree. But the colonists have suffered directly and most severely by these practices. In proportion as their interests might have prospered by the adoption of a wise system in the disposal of the public lands, they have suffered by the irregular and unwise methods that have been hitherto adopted, and they have at the same time been forbidden to apply any effectual remedy to the evils thus occasioned. While therefore it appears to be the duty, no less than the right, of the Parliament of the United Kingdom to legislate upon this subject, it is equally their duty, if they consider such an exercise of their power inexpedient, to relinquish formally their control over this matter to the Colonial Legislature. At all events, if the local assembly should not legislate for the greatest advantage of the mother country as well as of the colony, it would take care that the mismanagement of the public lands was not, as has hitherto been the case under imperial management, a source of great evil to the colony.

I shall now proceed to detail very briefly the practices which have been pursued in the disposal of the public lands in each of the colonies; to describe the general character of the results which they have produced; to suggest measures of remedy for the evils thus occasioned; and to offer a plan for the future disposal of all the land yet remaining in the hands of the Government, as well as of such as may be reinvested in the Crown by the operation of the measures which I shall suggest.

LOWER CANADA.

Lower Canada.

The exact area of the Province of Lower Canada is as yet undetermined. Bounded to the south by the States of the Union and the Province of New Brunswick, it has no defined limit to the north, and little is known of the capabilities of that part of the country. The surveyed portion is divided into seigniories and townships. The land comprised in the seigniorial districts amounts to about 8,300,000 acres, and the surveyed lands in the townships amount to 6,169,963 acres. Of the former the whole has been granted by the Crown, subject to an obligation to concede to actual settlers; and 4,300,000 acres have been thus conceded. The quantity of land disposed of for other than public purposes in the townships is about 3,500,000 acres.

The methods of granting the public lands of this Province, founded upon instructions from the Home Government or resolutions of the Governor in Council, have been numerous, and they have widely differed in character and object.

All grants by the French government prior to the conquest were made upon one uniform system. Seigniories, as they were termed, were created in favour of certain individuals of property or influence, who were bound to grant, or, as it was termed, concede, a specified portion of the seigniory to any applicant. The profit of the seigniors was derived from the payment of a small rent; from certain services which the tenant or *censitaire* was bound to perform; from a twelfth of the corn ground at the seigniorial mill; and from a fine upon every mutation of the property otherwise than by inheritance.

When the country fell into the hands of the English Government, lands were at first granted in free and common socage, subject apparently to no conditions, but with a reservation of a right on the part of the Crown to resume the whole or any part of the grant if required for military purposes. The quantity to be granted to any individual was fixed by regulations issued by the Lords Commissioners of Trade and Plantations in 1763, and was to be limited to 100 acres for each master or mistress of a family, and 50 acres for each white person or person of colour composing the family, with an exceptional power in the governor to increase this amount by 1,000 acres. The terms of the grant were made thus favourable in order to attract settlers from the other British North American colonies, now forming the United States. In 1775 these regulations were superseded by instructions from

Lower Canada.

England, following the Quebec Act of 1774, which restored the French laws and language. These instructions directed that all future grants should be made in fief and seigniory, in the same manner as those which had been made by the French prior to the conquest. Under these instructions three seigniories were created. In 1786 fresh instructions were issued by the British Government, addressed to Lord Dorchester, directing that grants should be made, in certain fixed proportions, to the refugee loyalists from the United States, and to the officers and privates of the 84th regiment, a colonial corps raised during the revolutionary war; such grants to be held under the Crown as seignior, and to be subject to the incidents of the seigniorial tenure. I could not discover what quantity of land had been granted under these instructions. The whole, or nearly the whole, of the grants were situated in that part of the Province which afterwards became Upper Canada; and if, which is doubtful, the grants were ever subject to the incidents of the feudal tenure, these were relinquished in the new state of things introduced by the Constitutional Act.

After the Act of 1791, which separated the Province of Quebec into the two Provinces of Lower and Upper Canada, fresh instructions were issued, which, with regard to the quantity of land to be granted, were similar to those of 1763. By these a quantity was fixed as the ordinary measure of a grant, and the same power of making an exceptional additional grant was conferred upon the Governor. But certain duties of settlement were required to be attached as a condition to every grant, in default of the performance of which the land granted was to revert to the Crown. These instructions continued in force till 1826, being in substance, and with only slight and altogether unimportant variations in form, addressed to every Governor, from Sir Alured Clarke to Lord Dalhousie.

Under these instructions, the practices introduced by the Governor and Council were,

1. The system of leaders and associates described by Mr. Davidson, under which, by an ingenious construction, or rather evasion of the instructions, 1,200 acres were granted to each of from 10 to 40 applicants; it being perfectly notorious, and within the personal knowledge of several of the Executive Council, that the object and result of the scheme was to throw into the hands of one of the applicants, termed the leader, the whole, or nearly the whole, of the enormous quantities thus granted. With this practice, in fact, the

history of the settlement of the townships of Lower Canada commences. The first grant was made to Mr. Dunn, who obtained the whole of the township of Dunham. No precise information could be obtained as to this particular grant; but it appeared that the associates, as they were termed, in this case were persons who really desired to obtain land for the purpose of settlement, and that Mr. Dunn, as the leader, assisted them with the means of establishing themselves, looking for his remuneration to the increased value which their industry must give to the remainder of the land. This township is, I believe, at the present time well settled. Lower Canada.

It was indeed to be expected, that a practice so palpably opposed to the spirit, and even to the letter of those Royal Instructions under cover of which it was pursued, would owe its origin to some circumstance really tending to advance the settlement of the country; but the plan was too profitable to be allowed to cease with the circumstances out of which it arose. It afforded apparently so easy a method of obtaining large tracts of fertile, and as it was deemed valuable land at a very trifling expense, that its abandonment could hardly be expected. The practice was accordingly reduced to a system; and during the administration of one Governor, Sir R. S. Milnes, and under the same six members of the Executive Council who constituted the land board, 1,425,000 acres were granted to about 60 individuals. The profusion of this land-granting board was rewarded by the Duke of Portland by grants of nearly 120,000 acres of land, rather less than 48,000 acres being granted to the Governor, and rather less than 12,000 acres to each of the executive councillors of which it was composed.

Even during the period, however, within which these grants were made, the grantees began to discover that the very great facility with which land could be acquired, rendered its possession well nigh valueless. To settle their grants was impossible without a large immediate outlay, for the purpose of affording to the settlers the means of communicating with each other, and with a market. This work, however, could be undertaken by no one individual with effect, unless the other grantees across whose lands the road must pass joined in the work; and even had this been done, the practice of making Crown and clergy reserves, and thus withholding from settlement two-sevenths of every township, imposed upon the proprietor of the remaining land so much additional expense for which he could never expect any return. The grants, too, were so utterly disproportioned to the population and wealth

Lower Canada.

of the Province, that even if all the grantees had set to work in good faith to settle their lands according to the terms of the grant, they must have been stopped by their inability to obtain settlers. In fact, even at the present moment, including squatters, and after nearly 2,000,000 acres have been disposed of in other ways, there is scarcely in the whole township land of the Province a population sufficient to settle these grants in the proportion of one family to every 1,200 acres. A few townships on the American frontier were settled from the United States. The remainder were either left entirely waste, or were abandoned by their proprietors, after a short trial had proved that any expense incurred in the attempt to improve them must necessarily prove a total loss.

2. After 1806 no new townships were granted; and the grants, which were very few in number, were almost entirely in lots of 200 acres each to actual settlers.

3. From 1814 grants were made under location tickets, with conditions of settlement. These conditions at first required, that in addition to the erection of a house, and the clearing and cultivating four acres of land on the grant, the settler should actually reside upon his lot for three years. This last condition was subsequently abandoned, and the conditions imposed amounted virtually only to a requisition that the grantee should build a hut and chop four acres of wood before a patent for his grant issued.

This practice continued till 1826, when instructions were issued from the Lords of the Treasury, establishing a system of sale by auction, the purchase-money being payable by four annual instalments, without interest. Under these regulations only such lands were open to purchasers as the Governor, on the recommendation of the Commissioner of Crown lands, should select for that purpose. The instructions also permitted a sale to actual settlers of a limited quantity, subject to what was termed a quit-rent, but which was, in fact, the payment of interest at five per cent. upon the estimated value of the land.

In 1831, instructions were issued by Lord Goderich, requiring the purchase-money to be paid by half-yearly instalments with interest; but these instructions have, it appears, never been obeyed, the Governor, upon the representation of the Commissioner of Crown lands, directing that the former practice of receiving payment by annual instalments without interest, should be continued.

In 1837, instructions were issued by Lord Glenelg requiring payment of the purchase-money at the time of sale. These

instructions remain in force at present, but no sales have as yet taken place under them. Lower Canada.

Concurrently with the various systems thus briefly described, there have been numerous exceptional grants, chiefly in reward of public services. To the militia who served during the revolutionary war, 232,281 acres were granted; to the executive councillors and the Governor above referred to, about 120,000 acres; to the militia who served during the war with the United States in 1812, about 217,840; but in addition to this amount of actual grants, there remain after nearly 20 years have elapsed since these grants were first promised, unsettled but valid claims on the part of these last-named militiamen, to the amount of probably 500,000 acres. Grants have also been made to officers and soldiers of the British army, either in the form of direct grants, or of a remission of the purchase-money; to commuted pensioners; to Mr. Felton and others under orders from Lord Bathurst; to two individuals in lieu of their salary, as chairmen of the quarter sessions, for which the Assembly of the Province refused to provide. There has also been an exceptional sale in England to the British North American Land Company of nearly 800,000 acres.

In addition to all the methods of granting land described above, the plan of Crown and clergy reserves demands a separate notice.

By the Constitutional Act of 1791, it was enacted that a reserve for the support of a Protestant clergy should be made in respect of every grant under the authority of the Crown, equal in value, as nearly as the same could be estimated, to one-seventh of the land granted; and that no patent for any grant should be valid unless it contained a specification of the land reserved in respect of the granted land. This Act was the origin of the clergy reserves. The Crown reserves were the result of a plan of the Executive Council, suggested, it is said, by the President of the Council, a refugee loyalist from the United States, who seeing that the disputes which had terminated in the independence of the thirteen provinces, arose ostensibly out of questions of revenue, imagined that all such disputes might be avoided in the Canadas, by creating an independent source of revenue sufficient to provide for the expenses of the government without any necessity for having recourse to the imposition of taxes. For this purpose he proposed that a reserve should be made for the Crown equal to that for the clergy; and it was imagined that as the settlement of the country advanced,

Lower Canada.

this reserve would yield a large annual revenue, and obviate all questions of taxation, by rendering the Government independent of the people. Had the disposal of the public lands been conducted with prudence, and had the Government performed its part towards the improvement of the country, by assisting in opening roads, and by giving to the settlers efficient institutions, it is possible that the objects of both of these reserves might have been accomplished, although at a price far larger and more burdensome than any taxation could have been. But, with few and unfrequent exceptions, the Government took no means to forward the settlement of the country, or to provide for any of the wants of the settlers. The crown and clergy reserves were not merely allowed to lie waste, but they were carefully disposed in such a manner as to separate most completely the actual settlers, and thus to obstruct in the greatest possible degree the progress of settlement. Added to this, the improvidence which, as has been seen, marked the whole proceedings of the Government in reference to the public lands, and the recklessness with which it drew upon this fund to reward services, or to satisfy claimants, diminished the value of these reserves in common with that of all the other lands of the Province, and rendered futile every hope of drawing a revenue from them. The injury therefore which they caused to the colony, was not compensated by any benefit to the Crown or the clergy, and after existing for 35 years, the Crown reserves were at last virtually abandoned when the system of sale was introduced. The clergy reserves however still continued, until in 1831 an Act was passed by the Imperial Legislature, authorizing the sale of one-fourth of these reserves, at the rate of not more than 100,000 acres annually.

The present is not the place to enter into those aggravations of the unpopularity of the clergy reserves, which arose from the object to which they were destined. But the history of these reserves, from their being first made, down to the present time, is too characteristic an illustration of the system pursued in the management of the public lands to be passed over. By the Act of 1791, under the authority of which these reserves were made, it was directed that 'whenever any grant of lands within either of the said Provinces shall hereafter be made by or under the authority of His Majesty, his heirs or successors, there shall at the same time be made, in respect of the same, a proportionate allotment and appropriation of lands for the above-mentioned purpose (the support of a Protestant clergy), within the township or parish to which such lands so to be

granted, shall appertain or be annexed, or as nearly adjacent thereto as circumstances will admit, and that no such grant shall be valid or effectual, unless the same shall contain a specification of the lands so alloted and appropriated in respect of the lands to be thereby granted, and that such lands so allotted and appropriated shall be, as nearly as the circumstances and the nature of the case will admit, of the like quality as the lands in respect of which the same are so allotted and appropriated, and shall be, as nearly as the same can be estimated at the time of making such grant, equal in value to the seventh part of the land so granted.' When the business of land granting commenced under the instructions given to the Governor of the Province in 1791, it became a question in what manner the provision quoted above could be most effectually complied with. Various plans were suggested for the purpose by the surveyor-general; and the Executive Council, to whom all these plans were referred, decided in favour of one which proposed that every township should be laid out in lots of 200 acres, of which every seventh lot should be reserved for the clergy, making at the same time another equal reservation for the Crown. Under this system there were first two lots open for settlement, then one lot reserved for the clergy, then two lots open for settlement, then one lot reserved for the Crown, then one lot open for settlement, and so on throughout the township. In this way the reserves for the clergy were so intermixed with the lots, which were either open for grant, or reserved for the Crown, as to ensure their being, in the average, of equal value. It would seem, however, that in this arrangement both the surveyor-general and the Executive Council misconstrued the clause of the Act which directed the making of these reserves; since even assuming that the reserve for the Crown was a grant by the Crown, which it clearly was not, the reserve for the clergy, being one-seventh of a township, of which only the remaining six-sevenths were open to grant, was equal to a sixth instead of a seventh, of the land granted. Upon this original error was grafted one yet more glaring. The practice originally pursued by the Crown in the disposal of the waste public lands of the Province, was, as I have described, to grant nominally to many, but in reality to one person, in one deed, whole, or half, or quarter townships, exclusive only of the Crown and clergy reserves, and amounting therefore to five-sevenths of the entire township, or of the smaller portion granted. In the patents by which these grants were made, however, the whole of the land which had been appropriated for the clergy in the

Lower Canada.

Lower Canada.

portion of the township granted, was specified as the allotment and appropriation for the support of a Protestant clergy in respect of that grant. Thus, assuming a township to contain 70,000 acres, divided into 3,500 lots of 200 acres each, which is rather more than the average dimensions of a township, but is assumed as the most simple amount for the purpose of illustration, the appropriation in respect of the clergy reserve amounted to one-seventh, or 500 lots, comprising 10,000 acres, and the Crown reserve to an equal quantity, leaving to be granted 2,500 lots, or 50,000 acres. But in the patent by which this last quantity was granted, and which recited the words of the Act, directing the specification of the reserve for the clergy, the whole 500 lots were specified ; and though of equal quality with the granted land, and one-fifth in amount, were described as being equal in value to one-seventh of the land granted, as nearly as the same could be estimated. By what process of reasoning the surveyor-general could have arrived at the conclusion, that one-fifth and one-seventh were equal, it is not easy to determine ; but the result was, that up to 1826 the reserve for the clergy was equal in value to one-fifth of the whole land granted by the Crown.

When the system of sale introduced by the Treasury Instructions of 1826 came into operation, the lots first sold were in most instances the Crown reserves. But here a difficulty arose. When the purchaser, having completed the payment of his purchase-money, applied for patent, these sales were considered by the Crown lawyers as equivalent to grants, and under the Constitutional Act no grant from the Crown could possess any validity unless it contained a specification of the reserve for the clergy in respect of the particular lot comprised in it. The whole of the reserve, however, which had been made for this purpose in the township within which these lands were situated, had been described in former grants ; and it therefore became necessary to make a fresh reserve for the purpose. This was a natural consequence of the previous error ; but it will hardly be believed that the fresh reserve, made by the surveyor-general, was again equal to one-fifth of the land granted, or 40, instead of $28\frac{4}{7}$ acres, upon a lot of 200 acres ; so that under this practice the reserve for the clergy, taking as before the case of a township of 70,000 acres, would amount to 12,000 acres, being the original reserve of 10,000 acres, and 2,000 acres upon the sale of the reserve for the Crown in that township. But the reserve did not stop even here. When the Act of the Imperial Parliament,

authorizing the sale of the clergy reserves, came into operation, and these reserves were brought into the market, the present attorney-general, whose office it was to prepare the drafts of patents, conceived that the Constitutional Act must be considered as applying also to these grants; and that, therefore, the patent must contain a specification of a reserve, even in respect of these reserves. It is to be presumed that upon a point of law such as this the attorney-general was in the right; but it certainly appears rather singular, that sales under the authority of an Act of Parliament should be invalid, because they did not comply with a provision in a previous Act specifically referring to grants under the authority of the Crown. But however this might be, it was necessary that this opinion should be acted upon, and a fresh reserve was made. Again, one-fifth was reserved, instead of one-seventh, and thus, to follow the same illustration, the reserves would be equal to 14,000 acres. It is obvious too that the system would not stop here. There must be a fresh reserve upon the 4,000 acres of additional reserves when they are sold, and again upon the 800 acres which would be reserved upon them; and this would be repeated until the process could be continued no longer. Supposing the process to be continued to this point, the reserve for the clergy would be equal to a fourth instead of a seventh of the granted land, and the clear excess would be 75 per cent. As the whole of the clergy reserves are not yet sold, it amounts at present only to 50 per cent., or 227,000 upon 446,000 acres. Lower Canada.

But the misconstruction or violation of the law with regard to this property has not stopped here. I have already stated, that under the Act authorizing the sale of these reserves, a quantity equal to one-fourth of the whole reserve was to be sold at the rate of not more than 100,000 acres per annum. Under this Act 299,811 acres have been sold out of 673,567, or considerably more than three-sevenths, and the sales in one year amounted to 111,000 acres. Assuming however, that only so much of the land specified as clergy reserve, as is specified in conformity with the provisions of the Constitutional Act, is really such reserve, then the amount sold is very nearly two-thirds instead of one-fourth of the whole. From the evidence of the Rev. Mr. Sewell it appears that these sales were made without the least regard to the interests of the clergy, and that the property of the Church has been needlessly sacrificed; and from that of Mr. Davidson, that the greatest part of the land so sold has passed into the hands of speculators, who have purchased with the sole view of

Lower Canada.

deriving a profit from the anticipated rise in the value of land. From the first to the last, the proceedings in respect of these reserves have been marked by irregularities and errors; which, although not greater than have prevailed with regard to all the public lands of the Province, are more striking, because, in this instance, the proceedings have been in violation of a plain and positive law.

To what extent and in what manner the settlement of the Province has been retarded by means of this profusion and irregularity in the granting of land, and of the practice of withholding land from grant, may be gathered from a comparison of the population of the township districts with the amount of land granted, and from the evidence of almost every witness examined on the subject. In the absence of all precise statistical details, the former can only be ascertained approximately; but it appears that the proportion is about nine inhabitants to a square mile. Even this, however, exhibits but partially the degree to which the various methods pursued in the disposal of public lands have retarded the settlement of the Province, because it assumes that the population is equally distributed over the whole surface. This is far from being the case. In some townships upon the American frontier, the inhabitants of which have participated in the advantages derivable from the roads and markets of the United States, the population is very considerably more dense. Excluding from consideration these townships, which in fact are indebted for their comparative prosperity to the extent to which they have been withdrawn from the influence of the colonial administration, it may be doubted whether the average population is four to a square mile, and in some extensive and fertile tracts, the whole, or nearly the whole of which has been granted by the Crown, it is not one to every 10 square miles. It is needless to refer to any evidence for the purpose of proving that such a population is poor and unprogressive. The evidence, however, of Mr. Kerr, Mr. Russell, Mr. Stayner, and others, furnishes in detail some of the more striking results of the practices I have described, and exhibits the manner in which these results have been produced.

I shall hereafter, when I have described the systems of land-granting pursued in the other North American colonies, to which the labours of this commission extended, advert more particularly to those evils which in all cases have arisen from the neglect and improvidence that have characterized this department of the administration. But I must here refer

briefly to the delays and impediments which were necessarily thrown in the way of the poorer applicants for land in consequence of the central character of the system of government established in Lower Canada, and the want of any efficient local agency for the management of this branch of the public service. With the exception of the attempts which were made to remedy this inconvenience by the establishment of land boards prior to the division of the Province, and in later years by the appointment of township agents, the operation of both of which was temporary and partial, no right to occupy land could be obtained except by means of a personal application to the Governor at Quebec. And even when by means of these local agencies, a qualified and incomplete right of occupancy was obtained, a satisfactory title to the land could only be procured at the seat of government. To the majority of the settlers this was equivalent to an absolute refusal of a grant, since the expense of a journey to the capital of the Province, and of a residence there for the period required in order to obtain a grant or a title, was greater than the purchase-money of the land would have been. Added to this, the time occupied in obtaining a patent, even when an agent was employed, was on the average 15 months. Numbers consequently who were disposed to settle, preferred occupying the first vacant lot without title, trusting to the justice or the negligence of the Government for the undisturbed enjoyment of whatever improvements they might effect. Numbers, too, it cannot be doubted, preferred emigrating to the United States, where land might be obtained, at a higher nominal price indeed, but with a certainty and facility which in fact made it much cheaper. Lower Canada.

The surveys of the township lands also were so imperfect and erroneous as to add very considerably to the practical difficulties in the way of settlement. Instances have occurred in which the lots professed to be granted had no existence except on the diagram in the surveyor-general's office. Yet more numerous were the cases in which a person receiving a grant of 200 acres, found that the lot assigned to him contained from 40 to 90 acres more or less than its assumed dimensions. In many instances the grant was without a boundary, or its figures and boundaries were totally different from those which, by reference to the map, would be found to have been assigned to it. It will be obvious that a very general uncertainty and distrust must have been produced by these errors, and that the desire of improvement in almost every settler must have been checked by fears, lest a more

Lower Canada.

accurate survey should demonstrate that the land which he had cleared and cultivated belonged to some other individual or to the Crown.

In making these last statements, it is due, however, to the individual by whom the office of surveyor-general is at present held, to state, that he cannot be held responsible for the errors I have described. From the system pursued originally, the greater part of the surveys were made by persons who were only nominally under the control of his department. The surveyor employed for the purpose was paid by the person to whom the land, when surveyed, was to be granted, and those surveyors were employed who would contract for the performance of the survey upon the cheapest terms. Many professed surveys, therefore, were made by persons who never had been on the ground. The outlines of the township were run; but the interior plan was filled up entirely either according to the fancy of the surveyor or from the report of the Indians or hunters who were acquainted with the general character of the land included within the limits of the township. And even when the survey was performed under the direction of the surveyor-general, the very inadequate scale upon which his office is maintained rendered it impossible that he should exercise any effectual supervision over his subordinates. It is the more due to Mr. Bouchette to make this statement, because during the 30 years that he has filled the office of surveyor-general, he appears always to have laboured zealously according to his means to advance the interests and to facilitate the settlement of the Province.

UPPER CANADA.

Upper Canada.

The area of the surveyed parts of this Province is stated to be 17,653,544 acres. Out of this there have been reserved for roads 450,000 acres, for the clergy 2,395,687; there have been granted and appropriated 13,660,838 (total, 16,506,525), and there remain to be granted 1,147,019.

In the evidence of the chief clerk in the surveyor-general's office, it is stated that rather more than 1,500,000 acres remain at the disposal of the Crown; and by a return subsequently furnished, this amount is stated at 1,597,019 acres. From a careful examination of the return itself, it, however, appears, that there is not more than the amount stated above. The error in the return has obviously arisen from its not including the reservation for roads in the enumeration of the granted and appropriated lands.

The methods of land-granting pursued in this Province have been as various as those described with reference to Lower Canada. Up to 1791, Upper Canada formed a part of the Province of Quebec, and the disposal of public lands was successively regulated by the instructions of 1763, of 1775, and of 1786, adverted to in the foregoing sketch of the systems of land-granting in Lower Canada. Upper Canada.

After the separation of the Province, the public lands in Upper Canada were granted under instructions from the Home Government identical with those described with regard to Lower Canada, the chief object of which was to provide against evils similar to those which had been experienced in the other North American Colonies from excessive grants to individuals, and which therefore established 200 acres as the ordinary extent of a grant. These instructions continued in force, without any alteration, till 1825.

The grants to officers and privates of the 84th regiment of foot, and to the refugee loyalists from the United States and their sons and daughters (who are termed U. E. loyalists), under the instructions of 1786, were, subsequent to the division of the Province, to be made in Upper Canada, and ever since that period grants have been and continue to be made to these individuals according to the tenor of those instructions. During the continuance of the same instructions, but, it would seem, in direct violation of their spirit, grants of 1,200 acres each were made to individuals of various classes, to magistrates, barristers, &c., &c., as described in the evidence of Mr. Radenhurst. Grants, of 5,000 acres each, were also made to executive and some legislative councillors, and of 1,200 acres each to their children. Attempts appear to have been made, at a very early period, to introduce a system of granting whole townships to individuals who would undertake their settlement, similar, in many respects, to the system of leaders and associates described in reference to Lower Canada. After 10 townships had been granted in this manner, the number of applications was however so great as to determine the Council not merely to abandon the system for the future, but to rescind the grants which had been made. This was accordingly done; but by way of compensation to the persons to whom these townships had been assigned for the trouble and expense they had incurred in attempting to fulfil the conditions of the grant, each grantee was entitled to receive 1,200 acres. This compensation was accepted by all except Mr. Berczy, to whom the township of Markham had been assigned, and who, having applied himself in good faith

Upper Canada.

to fulfil the conditions of the grant, was ruined by the decision of the Council to rescind it.

From 1791 to 1804 it would appear that grants were altogether gratuitous, and that no fees were payable except to an amount just sufficient to compensate the various officers concerned in passing the grant for their trouble. In the course of the latter year a scale of fees, proportioned to the extent of the grant, was introduced by an order of the Governor in Council, upon the payment of which almost any one was at liberty to obtain a grant.

The introduction of this scale of fees, from which, however, all grants to privileged persons, such as U. E. loyalists, militia, &c., &c., are stated to have been exempt, was the first attempt at system, and continued in force till 1819. In 1818, in addition to the payment of these fees, the performance of settlement duties was also required, as a preliminary condition of all grants, whether subject to the payment of fees or made to privileged persons. Under this scale of fees there were granted, in the 15 years, 388,263 acres.

In 1819 another scale of fees, nearly double in amount, was introduced. Under this scale, scarcely any grants were made, and it was in 1820 superseded by another scale of fees, which upon all grants above 500 acres amounted to 5*s*. per acre upon the grant. The Order in Council fixing this scale authorized the grant of 50 acres to indigent settlers without any fees. Under this authority, gratuitous grants of 50 acres each, to the amount of about 40,000 acres in the whole, were made ; and grants were also made of larger quantities, subject to the payment of fees according to the scale, amounting in the whole to 72,228 acres.

In 1825 regulations were issued by the Lords of the Treasury in England directing what was termed the sale of land upon quit-rents, but what was in reality the grant of land, subject to the payment of interest at five per cent. upon its estimated value. Under this system 15,100 acres were granted.

Up to this period all grants of land had been made at the discretion of the Governor in Council, not merely so far as related to the quantity and position of the land granted, but also as to whether the party applying should receive any grant at all. The surveyor-general, under whose general direction the whole land of the Province was placed, was the individual by whom, in most instances, this discretion was exercised, since all applicants were compelled to obtain from him a certificate that the lot for which they applied was vacant and might be granted ; and in all cases the adverse opinion

of this officer was sufficient to prevent any grant from being made. In 1827 a Commissioner of Crown lands was appointed, who was directed by instructions from the Lords of the Treasury, dated July 1827, to assume the management of the whole of the waste and ungranted lands of the Crown. By the same instructions, all public land was to be sold by auction, and to be paid for by instalments without interest. Under this system, slightly modified in 1833 by requiring the payment of interest upon the unpaid portion of the purchase-money, rather more than 100,000 acres of Crown lands have been sold. In Upper Canada neither the instructions of Lord Goderich in 1831, nor those of Lord Glenelg in 1837, have been complied with. Upper Canada.

There have been two cases in this colony in which the Government has delegated to others the disposal of its waste lands. A very extensive tract in the London and Western districts has been placed under the entire superintendence of Colonel Talbot, and the whole of the Crown reserves, and 1,100,000 acres in one block, in the Huron district, have been sold to the Canada Company. In the former case the delegation was more direct than in the latter, which took the form of a sale. The powers of Colonel Talbot, with regard to the whole of the tract he has been allowed to settle, are, however, apparently quite as absolute as those of the Canada Company with regard to the land they have purchased; and although there was not, so far as I could learn, any such stipulation in the arrangement with Colonel Talbot as should have exempted the land which he had not actually settled from the operation of any subsequent regulations framed by Government, yet the whole of the land thus circumstanced has been tacitly excluded from the operation of the Treasury instructions of 1827, and of those subsequently introduced. The sale to the Canada Company, though in form an exceptional method of disposing of public land, was in effect, and was intended to be, a delegation of the powers of Government in this important particular to a private company, prompted, apparently, by the obvious ill success of the proceedings of the Government, and by the hope that persons having a deep pecuniary stake in the result of their measures would be more careful, and therefore more successful in their operations. The result of both these experiments has been so far fortunate, that settlement appears to have proceeded with somewhat more of rapidity and regularity upon the land thus disposed of than upon that which remained under the control of the officers of the Crown.

Upper Canada.

The quantity of Crown lands disposed of, or appropriated, according to the different plans described above, amounts in the whole, including the sale to the Canada Company, to rather more than 13½ millions of acres. Of this amount there have been granted, subject to the regulations from time to time specially introduced by the Executive Council and the Home Government, not quite 600,000 acres, or considerably less than a 20th part of the whole; and with the exception of certainly less than 600,000 acres, all the granted land, or 13,000,000 acres, was disposed of prior to, or in satisfaction of claims which arose before, the year 1825, at which time the population was under 150,000. But the regulations above described, various as they were, do not comprise the whole of the modes by which land was disposed of by the Government of the Province, or by the authorities at home, whether the Lords of the Treasury, or the Secretary of State for the Colonies. The grant of 48,500 acres to Colonel Talbot, for settling a part of the enormous tract of land placed under his sole control and management, and the grant to the laird of M'Nab, by the Government of the colony, the grant of 12,000 acres to Dr. Mountain, the Bishop of Quebec, of a similar amount to the heirs of General Brock, and of 3,000 acres to Mr. Shireff, are, I am inclined to believe, only faint and inadequate specimens of the exceptional dealings in respect of rules, so little defined as apparently scarcely to allow of any proceeding being regarded as exceptional to them; although, from the general carelessness of the system, these were the only instances elicited in the course of my inquiries.

In this Province also reserves have been made for the clergy and the Crown under the same authority, and in the same manner as in Lower Canada. But though here also the same original error in laying out the land to be set apart for the clergy was committed, yet, as the surveyor-general, by whom the specification to be inserted in the patent was prepared, followed the terms of the Act, and described a quantity only equal to a seventh of the land granted, there has been no such complication of errors as I have described in reference to the Lower Province. The land set apart on the map, and treated as clergy reserves, exceeds by one-seventh the amount contemplated by the Legislature, but this excess has never been included in any patent, and it therefore remains public property. A considerable proportion of it has been sold under the name of clergy reserves. This, however, is a mistake, which admits of an easy and satisfactory correction. The provisions of the Act authorizing the sale of these

reserves, have, in this colony, been strictly observed. Less than one-fourth has been sold, and the sales have not amounted to 100,000 acres in any one year. Upper Canada.

In Upper Canada, however, the reservation and application of these reserves have been the source of a widely-spread and dangerous discontent. The purpose to which they have been applied has very greatly aggravated the dissatisfaction occasioned by the effects produced by their being withheld from settlement; and at the same time the constant experience of their injurious effects upon the settlement of the Province has embittered the polemical strife occasioned by the exclusive character of their destination. It was impossible in a colony where so deep and universal an interest prevailed upon this question, while pursuing an inquiry into the operation of former methods of disposing of the public lands, to refrain from an examination into the nature of the results of this particular appropriation. With a view to the most detailed and satisfactory information upon the subject, the leading clergy of all denominations were examined. All of them, to whatever sect they belonged, confessed and lamented the injuries inflicted upon the peace of the colony by these reserves. The Archdeacon of York, the most zealous, and certainly one of the most able defenders of the right of the Church of England; the Catholic bishop, M'Donnell, eminent for his loyalty; no less than the ministers of the different sects of Presbyterians, of the Methodists, and of the Congregationalists, stated their belief, in which everything that I could learn induces me fully to acquiesce, that it was vain to expect that the colony could be tranquil until this question was settled. It forms no part of the recommendations contained in this Report to suggest any measure by which this object might be accomplished, but I cannot do otherwise than point out the deep and pressing importance of the subject.

In the return of granted lands accompanying this Report (No. 13), are included appropriations made shortly after the termination of the American war, to Indians of the Six Nations, who had abandoned the old seats of their tribe to establish themselves in the Province under the protection of the English Crown, as well as some smaller blocks of land which were reserved for the Indians of other tribes out of the cessions made by them of the land which they had formerly occupied. The land appropriated for the use of the Six Nations' Indians, consisted chiefly of 570,000 acres of fertile and advantageously selected land lying on each side of the Grand River, from its mouth to its source. At the present time, according to the

Upper Canada.

statement of Mr. Jarvis, agent for the Indians, they do not possess, in round numbers, more than about 200,000 acres; I believe the precise amount is 187,000 acres. Of the manner in which the large portion they have alienated was acquired by the individuals into whose hands, as is stated by Mr. Radenhurst, it passed with the sanction of the Government of the colony, and nearly the whole of whom were connected with that Government, I could not obtain any testimony upon which I could feel myself justified in relying. It is, however, certain that the consideration paid for it was for the most part of merely temporary benefit to them. The Government, under whose guardianship the Indians were settled, and whose duty it should have been to provide efficient securities against any improvident grants, by which a provision, intended to be permanent, might be disposed of for inadequate or temporary returns, would seem, in these instances, to have neglected or violated its implied trust. To the extent of this alienation the objects of the original grant, so far as the advantage of the Indians was concerned, would appear to have been frustrated, by the same authority, and almost by the same individuals that made the grant. I have noticed this subject here for the purpose of showing that the Government of the colony was not more careful in its capacity of trustee of these lands, than it was in its general administration of the lands of the Province.

But taking into consideration this and all the other methods by which, as appears by the evidence of Mr. Radenhurst, lands might be obtained in this Province, it would seem that there is still a large amount for the granting of which no reason appears, and none could be found, without separate inspection of each of the 50,000 grants which have been made. The grants and appropriations in the whole appear by the Return No. 13 to amount, including the clergy reserves, to 16,056,525.

The grants and appropriations of which an account has been furnished are as follow:

Clergy reserves	2,395,687
U. E. loyalists	2,911,787
Militia	645,509
Under regulations of 1804	388,263
Ditto of 1820	72,288
Quit-rents	15,100
Discharged soldiers and seamen	449,400
Magistrates and barristers	255,500
Clergymen	36,900
Carried forward	7,170,434

Brought forward	7,170,434	Upper Canada.
Executive Councillors	136,960	
Legislative ditto	48,475	
Surveyors	264,950	
Canada Company	2,484,413	
Sold	100,000	
Schools	500,000	
Grants of officers	92,526	
Indian reserves	600,000	
	11,397,758	

leaving altogether unaccounted for 4,658,767, or considerably more than one-fourth of the whole. A small proportion of this, less probably than a tenth, is included in the land disposed of for the Government by Colonel Talbot, under the authority conferred upon him. But after allowing for this and other possible omissions of a similar character, it is still difficult to understand in what manner the greater part of this excess has been disposed of. It is not, however, impossible that upon a strict inquiry, a large proportion will be found to be still the property of the Crown, and that its supposed appropriation is the result of a practice referred to in the evidence of Dr. Baldwin, of putting fictitious names to favourable locations upon the diagram of a township in the surveyor-general's office, in order that they might be reserved for persons who possessed some particular claims upon the favour of the office. From various statements made to me in the shape of anecdotes that could not be embodied in evidence, I am inclined to believe that this practice prevailed to a very considerable extent. It has, I doubt not, very frequently happened that these fictitious names have been taken for real, and that many of the most favourable lots in the surveyed townships have been thus unconsciously reserved from settlement. To what extent this has been the case it is impossible to determine without a thorough and efficient investigation, for which neither the time nor the means at my disposal afforded an opportunity, and which, in the existing state of the surveyor-general's department, it would be very difficult to accomplish. But whatever may have been the cause of the circumstance, its existence affords a forcible illustration of the careless and irregular practices of the land-granting department.

Perhaps, however, the most striking proof of the early improvidence of the Government in its disposal of the waste lands of the Province is to be found in the fact, that from 1763 to 1825, during which period the population had slowly grown up to 150,000 souls, the quantity granted or engaged

Upper Canada.

to be granted by the Crown was upwards of 13,000,000 acres, while during the 13 subsequent years in which the population increased from 150,000 to 400,000, the quantity disposed of, including the sale of the clergy reserves, is under 600,000 acres. A fact such as this needs no comment.

In the course of the inquiries which I instituted, I heard it frequently asserted that there had been and still were many irregularities in the operation of the land-granting system, of a vexatious and harassing character, from which the poorer classes of settlers especially sustained very great inconvenience. One class of these irregularities, referred to in the evidence of Dr. Baldwin, has been noticed above, and the evidence of the same gentleman evinces the prevalent opinion upon this subject. From the observations I was able to make, I have little doubt that these assertions were well founded; but no specific instance of the sort came before me. Those persons residing at Toronto who had been concerned in obtaining land, possessed facilities of access to the office which freed them from some of the worst results of these irregularities; and as they were not generally persons intending to settle upon their grants, they were less affected by those delays to which they might be subject. The persons who have felt these evils in the greatest degree have been settlers in remote and thinly-peopled districts, who had, under the circumstances, no means of representing their grievances to me. Only one instance, therefore, of actual injury alleged to be sustained from this cause of late years, reached me; and that is described in a letter appended to the minutes of evidence, addressed to me at Toronto, but forwarded to me after I had left that place, and when consequently I had no means of inquiring into the truth of the complaint, or of ascertaining the cause to which it was attributable. From the evidence of Mr. Radenhurst as to the state of the surveys, and from the delay which, in spite of the willingness of that gentleman to afford me every information, I experienced in procuring the returns for which I applied, in consequence of the incomplete organization of the surveyor-general's office, and the apparent absence of all proper records of its transactions, I have little doubt but that this is by no means a solitary or uncommon instance of evils of this nature. In fact they appear to be inseparable from such a system, or rather such a want of system as that which I found to prevail in Upper Canada. With an establishment, inadequate at best, and for the last nine years under no efficient and responsible direction, it is almost a matter of course that these and similar irregularities should prevail.

NOVA SCOTIA.

Nova Scotia.

The area of the land of the Province of Nova Scotia may be estimated at 8,000,000 acres. Of this amount it is assumed that less than 6,000,000 of acres are fit for cultivation. And nearly the whole of this available land is included in the 5,750,000 acres which have been already granted. It is estimated by Mr. Morris, the present surveyor-general, that of the 2¼ millions of acres yet remaining at the disposal of the Crown, not more than one-eighth is suitable for the purpose of settlement.

My task in relating the proceedings of the Government in reference to the disposal of the waste lands of this Province is necessarily much simplified by the fact, that, at a very early period, the Crown divested itself of nearly all the land in the colony available for the purpose of settlement, and that consequently its subsequent operations have had little effect upon the progress or condition of the Province. The first grants of land to any considerable extent appear to have been made under instructions from the English Government issued in 1760, previously to which period grants of land had been at the discretion of the Governor and Council, and had been made with a great and seemingly judicious reserve. Of these instructions no copy remains of record in the colony, and nothing certain is known of their nature. In less than 13 years, however, after they came into operation, nearly 8,000,000 of acres, including the whole of the island of Prince Edward, then part of the Province of Nova Scotia, were granted in blocks of from 20,000 to 150,000 acres to individuals or companies residing or formed in England. All of these grants contained conditions of improvement; but after some expense had been incurred by the grantees in unsuccessful endeavours to settle the extensive tracts of which they had been made proprietors, the land was abandoned to its few inhabitants or suffered to remain absolutely waste. It still, however, continued in the possession of the grantees, and the whole Province was thus effectually closed against emigration from the mother country or the neighbouring colonies. Efforts were repeatedly made upon representations of the local government in 1773 and in subsequent years, to revest these lands in the Crown by a process of escheat, but were as repeatedly baffled by the influence of the absentee proprietors.

Since, however, it was felt that a valuable province, such as Nova Scotia, ought not to be left in these circumstances,

Nova Scotia.

the Government deemed it expedient to endeavour to attract settlers by throwing open for location, upon advantageous terms, all the land yet remaining at its disposal. A plan was accordingly framed for the purpose by the Lords Commissioners of Trade and Plantations, under which the ungranted lands of the Province in favourable situations were surveyed, and public notice was given of the intentions of Government to dispose of such lands by sale. On the appointed day 83,000 acres were accordingly offered for sale, but not a single purchaser appeared; no person apparently being willing to settle in a province, the prosperity of which had been so notoriously retarded by the early profusion of the Government. The same plan appears to have remained in force till shortly after the breaking out of the American war, at which time the sales were suspended, and orders were given to make gratuitous grants to refugee loyalists. These orders were speedily followed by directions to escheat the old excessive grants in respect of which the conditions of settlement had not been fulfilled. The execution of these directions was resisted by the proprietors of these grants, but very large tracts were nevertheless resumed, and 4,000 families were settled upon new grants. In these new grants, however, were included the whole of the escheated land, and thus a second time the Crown placed nearly the whole available land of the Province out of its own control.

In 1790, for reasons which do not appear, all further grants of land were forbidden, and this prohibition remained in force till 1808. This restriction was, however, frequently evaded by the issue of licences of occupation to actual settlers; and those who were desirous to settle, but could not obtain a licence, squatted upon the land. In 1808 instructions were issued by which a grant of 100 acres might be made to the head of a family, and of 50 acres to each member, not exceeding 500 acres in the whole, subject to the payment of a quit-rent of 2*s.* per 100 acres. This system continued in force till 1827, and the settlement of the country is stated to have proceeded rapidly under its operation. Many disputes and much inconvenience were, however, produced by the grants occasionally made of land upon which squatters had established themselves during the previous prohibition of all grants; and the appointment of local boards, adopted as a remedy for this evil, appears to have had very little influence. The practice of squatting, too, still continued, as might be expected when most of the causes to which it was attributable remained in full force, and when means were adopted to secure to the

squatter the benefit of his improvements. All of these grants were made subject to a quit-rent of 2*s.* per 100 acres, but the payment of this never appears to have been enforced, and the quit-rents were, in 1835, commuted for a yearly sum of 2,000*l.*, payable by the Assembly towards the salary of the Governor. Nova Scotia.

In 1827 the system of sale was introduced in this colony, in spite of a report made by the Governor to Lord Bathurst, pointing out what he conceived to be the injurious results of the plan. All persons, however, who were considered to have claims for grants of land, on the ground of actual settlement and improvements, were allowed to receive them upon the former terms, if they applied before the 1st of January 1828. 2,940 persons in the whole availed themselves of this privilege; 1,820 in Nova Scotia, and 1,120 in Cape Breton.

The progress of settlement in this Province has been necessarily slow. The early grants, whether those made prior to 1773, or those to the American loyalists, still remain for the most part uncultivated. Whatever progress the population and agriculture of the colony has made of late years, appears, from the evidence, to be attributable almost entirely to the squatters, who have acquired, from the cultivation of the land itself, the means of paying the amount of fees, or the purchase money necessary to secure a title. It is stated in the evidence of Sir R. George, that a very considerable portion of the available ungranted land of the Province is occupied by squatters, and that one half of the population of Cape Breton may be assumed to consist of persons of this class.

The practices which have prevailed in the land-granting department appear to have been not more consistent with the instructions of 1827, and the subsequent instructions of Lord Goderich in 1831, than those which have been described with regard to the other provinces. The practice of free grants has been continued; out of the 5,750,000 acres disposed of by the Crown in the Province, only about 120,000 acres have been disposed of under the system of sale; and Mr. Morris, the Commissioner of Crown lands, states, that the largest portion of this has been acquired not by actual or intending settlers, but by speculators, who have been tempted by the low upset price, and have purchased on account of the timber, or with a view to profit from a future sale.

In this colony there are the same defects and irregularities in the surveys which I have described in reference to Lower and Upper Canada, and the same immediate and prospective inconveniences resulting from this circumstance.

NEW BRUNSWICK.

New Brunswick.

The area of the Province of New Brunswick is about 16,500,000 acres. Of this quantity there have been granted 3,000,000 acres, and sold 1,400,000; in all, 4,400,000. Of the quantity still remaining at the disposal of the Crown, it is estimated that about 11,000,000 acres are fit for settlement.

Until the year 1784 this Province formed a part of Nova Scotia, but it does not appear to what extent the lands included within its limits had been granted before the separation took place. After its establishment as a separate province, grants of land were made under the authority of instructions from the Home Government by the Governor in Council, subject to the payment of a quit-rent of 2*s.* per 100 acres. This system continued in force up to the year 1827, when the system of selling was introduced by instructions from the Lords of the Treasury.

The exercise of the power thus vested in the Governor and Council appears to have been characterized by very little more prudence and reserve than in the other colonies, since, although it is estimated that one half of the granted land is in the possession of actual occupants, it appears that at the present time very little more than a twentieth part is under cultivation.

In carrying out the system of sale in New Brunswick, no attention appears to have been shown to the instructions from Lord Goderich in 1831, directing that the purchase-money should be paid by half-yearly instead of annual instalments, and should bear interest. The system introduced by the Treasury instructions of 1827 would seem to have been continued till the receipt of the last instructions of Lord Glenelg in 1837. The low price of land in this Province, 2*s.* per acre, and the easy terms upon which payment is required, have led to an extensive acquisition of land by persons who have done nothing to improve it; and it appears from the evidence of Mr. Baillie, that there are great difficulties and delays in the way of obtaining a title, occasioned by the recent Act of the Provincial Parliament for regulating the disposal of waste lands.

In this Province, also, there are uncertainties and difficulties resulting from the imperfect and incomplete state of the surveys, similar to those which I have described in reference to the other colonies; and owing to the inadequate establishment of the surveyor-general's office, there is nearly a twelvemonth's business in arrear.

PRINCE EDWARD ISLAND.

Prince Edward Island.

THE history of Prince Edward Island, so far as relates to the system of land-granting, is most brief. The whole of the land was granted in one day to absentee proprietors upon terms which have never been fulfilled. To this original profusion may be attributed all the evils under which this island has laboured, and to which, in spite of unremitting exertions on the part of the provincial legislature to enforce upon the Home Government the necessity of applying some remedy, it is still exposed. In every other colony there has been such a degree of laches upon the part of the Government as in equity to preclude it from any enforcement of the original conditions upon which grants were made; but in Prince Edward Island scarcely at any time have five years been suffered to elapse without some appeal to the colonial minister, praying that the Crown would resume the grants it had made, as a measure not merely legally justifiable, but as the only measure that could free the Province from the evils that these excessive grants had inflicted. Upon one occasion the representations of the Assembly temporarily prevailed; process of escheat was adopted, and two townships were resumed by the Crown; but the influence of the absentee proprietors prevailed with the Home Government to stop the measures which had been commenced, and from that time to the present nothing has been done to enforce the settlement of the grants, the greater number of which yet remain chiefly in a wild state.

The repeated efforts of the legislature of the island to compel the forfeiture of these grants, induced the Home Government, at the same time that it refused to accede to the measures proposed for the purpose, to recommend another measure as a substitute. Accordingly, Lord Goderich, when Secretary of State for the Colonies, suggested that a tax should be imposed upon all wild land, and this suggestion was repeated by Lord Stanley, and at a later period by Lord Glenelg. The Assembly, regarding such a measure as inadequate, declined at first to entertain it, but at length, finding that there was no chance of obtaining the sanction of the Imperial Government to any bill for the escheat of the waste lands, they passed an Act imposing a tax of 4*s.* per 100 acres. This Act was reserved for the allowance of the King in Council, and upon the representations of the absentee proprietors, such allowance was refused.

From the preceding brief and general sketch of the history of the system of land-granting pursued in all the Provinces of British North America, it appears that similar general principles have guided the Imperial Government in framing the measures which it has successively introduced and relinquished. But although hitherto the administration of this branch of the public service has been conducted upon similar principles, the actual practice has been and continues to be different in each colony. In no two colonies, in fact, has the same system prevailed at the same time. In Upper Canada, to select a single epoch, after 1804, land was granted upon the payment of fees, to almost every applicant, in lots of from 100 to 1,200 acres, in addition to the free grants to privileged persons, and till 1818 the grants were free from all conditions. In Lower Canada, at the same time, land was being granted in tracts of from 10,000 to 40,000 acres, subject to conditions of settlement. In New Brunswick land was granted, subject to the payment of a quit-rent, while in Nova Scotia, till the year 1808, all grants of land were absolutely forbidden. And even when an uniform system of sale was professedly established, the practices in the different colonies have been as variable as they previously had been. In Upper Canada, payment of the first instalment was never required at the time of sale ; the nominal price averaged 10*s.* per acre ; and after 1833 interest was required upon unpaid instalments. In Lower Canada, payment of the first instalment was always required ; the price of land has been about 3*s.* 6*d.* per acre, and interest has never been demanded. In New Brunswick the price has been about 2*s.* per acre, and the payment of interest has never been required. And in Nova Scotia, the same price, and the same practice of not requiring interest, has prevailed ; but nearly all the land occupied for the purpose of settlement has been disposed of by free grant, in spite of the instructions of the Home Government, or has been occupied by squatters. In both Upper and Lower Canada also, large free grants of land have been made even up to the present moment, in fulfilment of previous engagements on the part of the Government, while in New Brunswick no land has been disposed of, excepting by sale, since 1828. In New Brunswick, land required, or supposed to be required, for actual settlement, has been sold at 2*s.* to 2*s.* 6*d.* per acre, while timber land has been sold at as high a price as 10*s.* In Lower Canada, on the contrary, timber land has been sold at as low, and in many cases at a far lower price, than other land. The purchase in the district of Gaspé, particularly

referred to hereafter, which was made entirely for the sake of the timber, was at an average price of about 3*s.* per acre. In Lower Canada and New Brunswick, all purchases appear to have been made *bonâ fide*, while in Upper Canada the vast majority of purchases appear to have been merely nominal, the bidders having no intention to become purchasers, and bidding only that they might transfer their rights to those whom they had overbid. In fact, there is scarcely a single particular, from the mode in which the land was selected for sale by the Governor, to the manner in which the title was obtained after the completion of the purchase, in which different and even opposite practices did not prevail, under what was intended and assumed to be an uniform system. It is obvious that all of these practices could not be right; but, judging from the results, it is not unfair to conclude that they have all been wrong. Almost every witness examined upon the subject condemned the practice with which he was best acquainted. Not one person could be found in any colony, even among those who might be supposed to possess a motive for looking with a favourable eye upon the system which they were engaged in carrying out, to speak in its praise. Such an unanimity of disapprobation must be allowed to possess considerable weight. In all of the colonies whose history I have previously sketched, in connection with the subject of my inquiry, the various methods of disposing of the public lands have produced results of the most disastrous character upon their progress and prosperity.

The evidence collected upon this subject, and appended to the present Report, discloses the existence of evils in every colony similar in kind and in degree, having a common cause, and involving similar consequences. The settlers, separated from each other by tracts of appropriated but unoccupied land, whether Crown or clergy reserves, or private property, have been placed in circumstances which rendered it impossible that they should create or preserve the instruments of civilization and wealth. Their numbers are too few, and their position too distant, to allow them to support schools, places of worship, markets, or post-offices. They can neither make nor maintain roads. The produce of their farms, owing to the necessarily imperfect methods of cultivation pursued under such circumstances, is small in quantity, and, owing to the difficulty and expense of conveying it to market, of little value. The money that has been expended in the acquisition and improvement of the land they occupy yields them no adequate return; and though the means of subsistence are

within their reach, yet these are rude, and not unfrequently scanty, and have to be purchased by severe and oftentimes unremitting toil. The experience of the past warrants no expectation of any improvement. With very few and irregular exceptions, such a state of things has prevailed in every district of every colony, from its establishment to the present time; any increase of population having led rather to an extension of the limits of settlement than to the occupation of the unsettled lands in the midst of the old occupants. To an individual placed in this position there is, consequently, only one means of escape; the total and immediate abandonment of his farm, either selling it for what it will fetch at the moment, or allowing it to remain unoccupied till he can obtain what he considers a fair price This is no exaggerated description of the difficulties and privations of persons so circumstanced, or of the manner in which those, who have not dissipated all their means, escape from it. The evidence of Mr. Kerr, of Mr. Russell, of Mr. Radenhurst, of Mr. Sullivan, of Mr. Rankin, and of Mr. Hawke, confirm, in the most complete manner, the above representation, as regards Upper and Lower Canada; and, with respect to Nova Scotia and New Brunswick, in addition to the evidence given before the Commission, the statements of Major Head, by whom these colonies were visited in his capacity of Assistant Commissioner, and who is himself a native of Nova Scotia, represent a degree of stagnation and decay, as existing in these colonies, which, on less credible testimony, it would be difficult to believe. The picture of deserted and ruinous dwellings, and of abandoned farms, which he draws, is such as might be expected in a country recently the victim of a hostile invasion, or in which the ungrateful soil barely repaid the labour of the cultivator. The picture, however, is drawn with respect to countries that have not felt the footsteps of an enemy for more than half a century, possessing a soil of abounding, if not of unexampled, fertility, and rich in all the elements of commerical and agricultural wealth.

In the Lower Provinces there has not been that immigration of individuals possessed of capital which took place to so great an extent into Upper Canada, and which was stimulated by the offers of the Provincial Government, and by representations, sanctioned at least, if not made, by the Government at home. The colonies of Nova Scotia and New Brunswick, therefore, afford no such striking instances of ruin to the emigrant capitalist as are furnished by the evidence taken in respect of Upper Canada; but they contain abundant

proofs of the existence of those circumstances which repress industry and forbid progress. In Upper Canada the large emigration of capitalists created a temporary activity and a seeming prosperity, in which New Brunswick only partially shared. The money paid by such emigrants, as the price of the land they intended to cultivate, stimulated a speculation in lands for which it supplied the means; and the large sums expended in the clearing and cultivation of their farms, although yielding no sufficient return to themselves, gave employment and subsistence to the labouring population, and enabled many of these latter to establish themselves advantageously. But all this was in its nature temporary. The emigration of capitalists well nigh ceased with the year 1834; and a progress, dependent upon this source, continued but a short time after the impulse was withdrawn. It was to no cause but the unprecedented emigration, from 1828 to 1834, that we can attribute the great increase in the price of land, which has been so often referred to as a proof of the prosperity of Upper Canada; and the present nominal prices of wild land in that colony have been maintained entirely by an expectation of a similar degree and character of emigration for the future. Still there, where the apparent prosperity has been greatest, we have at the same time the strongest evidences of the evil and injury by which it has been accompanied. The Lower Provinces, to which no similar emigration has occurred, exhibit the ordinary and inevitable results of the policy which has been pursued in their settlement, unaffected by any disturbing causes.

It is not improbable that attempts will be made to impugn the accuracy of these statements, and that comparisons will be drawn between the advance of these colonies in population, and that of the United States during the last few years, for the purpose of proving that the inferences drawn by different witnesses, and adopted in the present Report, are not warranted by the facts stated. But there are certain general facts which it is impossible to deny or evade. The enormous disproportion between the granted and cultivated land in every Province, and the great re-emigration to the United States, admit of no contradiction. Allowing that during the last few years there has been a very considerable augmentation in the number of the inhabitants, and in the agriculture and commerce of the colonies, and that, compared with their previous condition, their present circumstances exhibit hopeful signs of improvement and activity, this does not affect the truth of the representations I have made. It

is still incontestably true, that after the lapse of a period varying from 60 to 10 years, less than a 20th part of the land granted by the Crown has been reclaimed from the wilderness, and that a very large proportion, if not the majority, of the emigrants from the United Kingdom, who have arrived in these colonies, have left them for another land, with no greater natural advantages of soil or position, and where they are surrounded by a people whose habits and institutions are unfamiliar to them. I do not dwell here upon the high official rank and unimpeachable personal character of many of the gentlemen by whom the obnoxious disclosures have been made, because the two circumstances to which I have just referred are notorious and indisputable. They require no weight of evidence to establish their truth, and they sufficiently prove the accuracy of the general conclusions deduced from the whole evidence.

Any comparison, too, between the increase of population in these colonies, and in the United States, is essentially fallacious. In Upper Canada, for instance, the immigration of 10 years, added to the natural increase by births, doubled the number of inhabitants; but the absolute increase was only 200,000, and the immigrants who remained in the colony, did not probably amount to more than 120,000. To have produced a similar effect upon the population of the United States would have required an immigration of nearly four millions. The proper standard of comparison would be one of the new states in the western territory, such as Illinois, where, in less than 15 years, the population has risen to a greater amount than that of Upper Canada at the present time, and in which the general advance, in every matter connected with civilization and material progress, is, beyond all comparison, greater than anything which the most favoured spots in these colonies could exhibit. It came to my knowledge, that in this state there was one town of recent foundation, in which a considerable number of English settlers were established, all of whom had originally attempted to settle themselves in Upper Canada, and had been driven from that Province by the impediments to success which they found everywhere existing; and I am credibly informed that a large portion of the population of this state was composed of persons of the same class. In the face of such facts I cannot acquiesce in any eulogy of the past system, because it has not entirely repelled or driven out all emigrants from the United Kingdom, nor prevented those who have stayed from contributing, in some small measure, to the advance of the Provinces.

The evils above described are of so prominent a character, and affect so materially the progress and wealth of every inhabitant of these Provinces, that it was impossible they should have been suffered to continue without some effort for their cure. Accordingly, it appears that in all of the colonies different measures, having for their object the removal of existing, or the prevention of future, inconveniences of this character, have been from time to time adopted. Whatever may have been the nature of these measures, or the manner in which they were intended to operate, the present condition of every colony testifies most unequivocally to their entire and absolute failure. No detailed evidence is required upon this point. Every where the circumstances against which they were directed exist in full vigour, and no traces are to be found of the existence or operation of a remedy. And upon inquiry, it appears that with scarcely any exception the various proceedings that have been at different times adopted as a remedy, have been either inoperative or injurious; either they have done nothing, or they have done mischief. A brief examination of these measures will show the causes to which their failure is attributable.

The previous history of the old American colonies had made the English statesmen of 1763, in some degree, familiar with the nature and the causes of those evils to which new countries are exposed, from the manner in which the public lands are disposed of. Accordingly, in the instructions addressed to the Governor of the Province of Quebec immediately after the Peace of Paris, which secured to England the undisturbed possession of the Provinces she had conquered, we find a recognition of the existence of these evils employed as introductory to a measure of prevention. 'Whereas,' say the instructions, 'great inconvenience has heretofore arisen in many parts of the colonies in America, from the granting excessive quantities of land to particular persons who have never cultivated the same, and who have thereby prevented others, more industrious, from improving such lands;' and this recital is followed by a declaration limiting all grants to an extent proportioned to the number of the family of the applicant, and in no case beyond such an amount as, with a large family, might be easily cultivated; though in the subsequent clause a power is vested in the Governor of increasing the grant by 1,000 acres, in cases where he might deem such increase expedient. In the instructions of 1791, the quantity to be granted was yet further limited; 200 acres being established as the general extent of a grant. This was

the first and most natural expedient. The evils referred to in the extract from the instructions which I have just quoted, had been occasioned by excessive grants; what, therefore, could seem a more appropriate remedy than the prohibition of large grants for the future? The effect of the regulation, however, was not answerable to the intention of its framers. It failed partly from the abuses introduced or permitted by those to whom its execution was entrusted, but still more by its own intrinsic insufficiency. In Lower Canada these instructions were evaded by the system of leaders and associates previously referred to, and described in the evidence of Mr. Davidson. And the Home Government, by whom these instructions were framed, and by whom they were repeated from time to time, upon the appointment of each successive Governor, even up to the introduction of the system of sale in 1826, itself not merely afforded an implied sanction to this evasion, by authorizing a grant of 12,000 acres to six of the executive councillors who had formed the land board, under the authority of which these excessive grants had been made, but violated its own instructions by these grants, and by the grants to Sir R. S. Milnes and others, referred to in the same part of the evidence. In these cases, and in the cases enumerated with regard to Upper Canada by Mr. Radenhurst, the rule was evaded. But in both Provinces, and in the latter Province especially, it was found to be insufficient, even when fairly carried out. By far the largest portion of the present waste, but appropriated lands, in the Province of Upper Canada, were granted originally in 200 and 100 acre lots to U. E. loyalists and militia claimants (Return No. 16); to the former as a reward for the loyalty which induced them to abandon the United States, in order to maintain unimpaired their connexion with England, and to the latter in consideration of the services rendered during the last war with the United States. In Lower Canada also, including the grants to militia men, nearly 1,000,000 acres were granted in the spirit of these instructions, in 200 and 100 acre lots. In these cases, therefore, it is not to the extent of the individual grants that we can attribute the existence of evils of the very character pointed out in the extract quoted above; and yet such evils were produced by these grants as completely as by the most flagrant evasion or violation of the instructions of the Government. Enormous tracts of land, to the extent, in one case, of 100,000 acres, were acquired by different individuals who would neither cultivate the tracts thus acquired, nor dispose of them upon terms to attract settlers. The first plan, there-

fore, for preventing these evils by limiting the amount of the land to be granted to individual applicants, was proved to be altogether inadequate.

But as a further means of preventing the evils referred to in the instructions of 1763, conditions of settlement and cultivation were attached to the greater number of the large grants of land made in Lower Canada, and to nearly all of those in Nova Scotia, New Brunswick, and Prince Edward Island. The grantee was bound to place settlers and to make improvements upon his grant within a certain fixed period, and in certain definite proportions. In default of the performance of these conditions the grant was to be void. These conditions were, however, as unavailing as the previous limitation had been. In only a very inconsiderable number of cases were they performed to any extent, and in none probably were they performed according to the terms of the grant. But though the grants thus became liable to forfeiture, this liability was seldom, in some colonies never, enforced. The land was left unsettled and waste, but it still remained the property of the grantees, only to be resumed by legal process.

The proved inadequacy of these regulations and conditions led to the adoption in 1818, both in Lower and Upper Canada, of a new system. Under this the improvement of the land and the establishment of a settler upon it, instead of being a subsequent, was made a preliminary condition of all grants, and no title to the land was to be obtained until after its fulfilment. This plan, if it had been rigidly enforced, would have greatly checked, if it had not entirely prevented, the acquisition of any land except by those who had actually settled upon it. But it was heedlessly relaxed when comparatively few grants had been made. Although, therefore, a considerable degree of settlement took place under this system, its chief effect was to occasion a certain outlay upon the land in the colourable performance of the conditions, without producing any improvement in the land, or diminishing in any degree the evils occasioned by the unsettled grants.

This result is attributable chiefly to two causes; the one, the nature of a very large portion of the grants to which the conditions were made applicable; and the other, the state of the districts within which, for the most part, these grants were situated. The greater proportion of the grants were made in reward of services to U. E. loyalists and militia. Individuals of these classes were not, in the majority of cases, disposed to settle upon the land promised them, and they not

unreasonably complained of the annexation of any conditions to what they contended was designed to be a free and unincumbered gift. It was quite fair upon every principle, that when an individual, entering the country in order that he might there find the means of bettering his fortune, applied for a grant of land upon which he could settle, the Crown should require some proof that the application was made *bonâ fide*, and that the applicant really designed to cultivate his grant. But it was alleged that this rule did not apply to the case of persons to whom the land had been promised as a reward for something that had been already performed. It was no favour to such persons to allow them to receive a grant upon the same terms upon which it might be obtained by almost every applicant, and a compliance with which would have destroyed its value, since the cost of performing settlement duties was greater than the selling price of the land. Great numbers of these persons, therefore, obtained location tickets, never intending to perform any conditions, and trusting that no steps would be taken by Government to dispossess them. And those who did perform the conditions, did so in the slightest and least effectual manner, merely in order to enable them to obtain a secure and marketable title. There were some, however, both of the U. E. loyalists and militia, who would have been willing to occupy the land granted to them, and these, as well as the intending settlers of other classes who had obtained location tickets, applied themselves in earnest to clear and cultivate the land of which they were put in possession. But there were insurmountable obstacles in their way. The assigned lot was often at a distance from all settlements, and with no roads leading to it. Frequently it was well nigh impossible for the settler even to discover the actual position of a lot; and when he had encountered and overcome these difficulties, a more lengthened trial often convinced him that ultimate success was not to be hoped for, and compelled the abandonment of his improvements. The land granted under these conditions, added therefore to the land retained in a state of wilderness, uncultivated by the proprietor, and withheld from those who might have brought it under cultivation.

The uniform failure of these successive methods, added to complaints of favouritism, led, about the year 1826, to the introduction of the system of sale. In Upper Canada it appears that this system has, to a considerable extent, effected one of the intentions of its framers, by preventing the acquisition of land for any other purpose than that of actual settlement.

Still the results of the system have been highly injurious in that Province, as I shall have occasion to show in connexion with another part of the subject. In Lower Canada, except in the case of purchases by squatters, it appears that the greater part of the land was purchased by speculators, and a similar result appears to have been produced in New Brunswick and Nova Scotia. In these latter colonies, therefore, the system of sale has added to whatever evils are produced by the existence of the large tracts of appropriated but unoccupied land.

None of the methods to which I have thus referred had, or were intended to have, any retrospective effect. They were prospective merely. Existing inconveniences were left untouched. All that was attempted was to prevent the occurrence of similar inconveniences in respect of any future grants. The plans successively introduced and abandoned were designed as measures of prevention, not of remedy, and, as has been shown, they failed almost entirely, even in this limited, and it might perhaps be added, unimportant, object. There have, however, been efforts on the part of the Government to remove existing, as well as to provide against anticipated evils. The measures adopted for this purpose have been two: the adoption of proceedings to procure the escheat of grants in respect of which the conditions had not been fulfilled; and the imposition of a tax upon wild lands. The former has been attempted in Nova Scotia, New Brunswick, Prince Edward Island, and Lower Canada; the latter in Upper Canada and Prince Edward Island. In the first-named Province, in which, as has been already stated, nearly the whole of the available land comprised within its limits was granted, as early as 1763, to individuals or companies residing for the most part in England, and where the result might be said to be the virtual annihilation of the colony, the intolerable evils thus occasioned led to early attempts to recover by escheat the lands so lavishly and improvidently alienated. The owners of these grants, however, many of whom had expended considerable sums in ill-directed and abortive efforts to improve them, resisted the attempt; and from their position in England, and the influence they were thus enabled to exert, resisted it with success. It is difficult to say how long this Province, the most rich in mineral wealth, and most accessible from Great Britain of all the British colonial possessions on the continent of North America, might have remained in the entire possession of these persons, had it not been for the necessity imposed upon the English Government of providing

an asylum for the refugee loyalists from the United States. The Province of Nova Scotia, with its numerous and capacious harbours, its fisheries, and its mines, appeared as eminently fitted to become the home of those merchants and capitalists of the United States who were desirous of remaining citizens of the British empire, as did Upper Canada, with its fertile soil, for the agricultural class of refugees. In order to afford the means of settlement to persons of the former class, process of escheat was commenced against the proprietors of the unimproved land in Nova Scotia, and large quantities were escheated, upon which these persons were established. Both the refugees and the Government appear to have imagined that the settlements thus formed would maintain a successful rivalry in commercial enterprise with the cities on the seaboard of the United States. These hopes were, however, utterly disappointed. While the American cities advanced with unexampled rapidity, and extended their commerce in every direction, the towns founded by these refugees began to decay almost from the moment of their foundation, and speedily sank into a state of hopeless stagnation. The cause of the mortifying contrast is obvious. The former were supported by the trade of a community rapidly advancing in numbers and wealth, whose products they exported to foreign countries, and whose wants they supplied by importation. The latter were isolated establishments, fixed in a country which not merely had but a scanty and impoverished population at the time, but which was closed against settlement by the early improvidence of the Government. The attempt to establish great commercial towns in a Province which, from the want of a population to bring its great natural sources to account, had no exports, and, consequently, no imports, necessarily failed ; and all the wealth brought into the country by these refugees was in a very short period entirely wasted. The agricultural settlers experienced a similar fate. The want of roads, and the scattered position of the population, fettered their industry ; while the institutions of their new country, from which every vestige of the municipal system of the old colonies was jealously excluded, prevented them from applying those remedies by which the citizens of the United States have freed themselves from similar inconveniences. The progress of the colony, therefore, was slow and languid ; and even at the present time, after the lapse of more than half a century, only 1-30th of the granted land is under cultivation. Even in this case, therefore, the most favourable that could be selected, the practice of escheat

may be considered to have totally failed as a remedy for the evils produced by excessive grants. In the evidence of Mr. Morris and Sir R. George, with regard to Nova Scotia, of Mr. Baillie with regard to New Brunswick, of Mr. Lelacheur with regard to Prince Edward Island, and of Mr. Davidson with regard to Lower Canada, in all of which colonies escheats have been enforced or attempted, will be found abundant proof of its general inutility. As a measure of punishment merely it has had a small and partial effect; but as a remedy it has been altogether inoperative.

There remains for consideration only the measure of a tax upon wild land. This differs in one respect from all the other devices enumerated above, inasmuch as it has proceeded not from the Home, but from the Provincial Government. There have, however, been only two colonies in which it has been attempted, Upper Canada and Prince Edward Island. In both of these the object with which it was proposed, was not so much to remedy the general evils produced by the existence of the wild land as to compel the proprietors to contribute, at least in some small degree, towards the general revenue of the colony. The tax, therefore, was not at all in the nature of a fine. Wild land was considered as a property, and, as such, as the legitimate object of a tax, but it was rated at a less amount than land under cultivation. The law imposing such a tax proposed in both colonies, has, in both, received the sanction of the Legislature. Its operation can, however, only be traced in one, since, in Prince Edward Island, the sanction of the Imperial Government was withheld from the Act by which it was imposed. In Upper Canada, where it has existed for nearly 20 years, its operation has been in a very slight degree beneficial; and even the benefits which it has produced have been, to a great extent, counterbalanced by consequences resulting from the manner in which the law has been enforced.

The tax upon wild lands in Upper Canada was first imposed in 1820, or perhaps it should rather be said, that in that year measures were first taken to enforce its payment. A tax of this sort had previously existed; but as it was merely a personal charge upon the owner of the land, it could only be recovered in those cases in which the owner resided within the district where his lands were situated. In 1820 it was made a charge upon the land, and the sheriff was authorized to sell the land in the event of nonpayment of the tax for eight years. By the Act imposing the tax, the assessment upon any species of property cannot exceed 1*d.* in the pound. The

power of assessment is vested in the magistrates of the district, who also have the sole control of the funds produced from this source. Wild land is valued at 4*s.* per acre, and land under cultivation at 20*s.*; so that the tax upon the latter is five times greater than that upon the former; and the utmost amount to which the owner of wild land can be subject under this Act, if the tax is regularly paid, is 1*s.* 8*d.* per annum for every 100 acres. There are, however, provisions in the Act for augmenting the amount of the tax if it is unpaid for more than a certain period; and there are also some small additional charges imposed by other Acts, to which wild lands are subject on account of the allowances to members of the Assembly, and the expenses of marking the boundaries of a township. The total amount, however, of all these taxes, supposing them to be unpaid for the whole period of eight years, is very little more than 4*s.* per 100 acres per annum. Of the amount raised from this source under the Act of 1820, only one-third, according to the statement of Mr. Robinson, is applicable to the making of roads; and this, being expended under the superintendence of an irresponsible magistracy, is productive of very little advantage. It appears, too, from the evidence of Mr. Radenhurst, that the tax is levied only upon such wild land as has been actually granted by the Crown by patent, and that there are upwards of 700,000 acres of wild land, private property, the patents for which have not been applied for, and the owners of which, consequently, escape the tax. In addition to this amount, there are upwards of 1,000,000 acres sold to the Canada Company similarly circumstanced, and the whole of the clergy and school and college reserves, amounting to 2,500,000 acres; so that upwards of 4,000,000 acres, or more than a fourth of the appropriated but unoccupied land of the province, escapes all contribution to the tax. It can excite no surprise, therefore, that the produce of this impost should have caused very little perceptible improvement in the country.

The tax, too, has been of very trifling advantage in stimulating the owners of wild lands to any efforts for the improvement of their property; the amount is too insignificant to give an adequate motive for such an expenditure as might attract settlers, or even to induce a sale at a reasonable price. In fact, supposing the tax to be paid regularly, it would not in five years amount, for 100 acres, to the value of a single acre, at the present average price of public land. In this respect, therefore, it has been totally inoperative. It has, however, had one beneficial effect, though this has resulted

chiefly from the abuse of the power of sale, and has been small in comparison with what might have been obtained by a different system. In almost every case in which the tax was unpaid, the land was owned by absentee proprietors, many of whom, probably, were hardly aware that they had any such property. Land thus held was absolutely closed against settlement, since there was no possibility of obtaining a title to it. As, however, the practice was to put up for sale the whole of the land in respect of which the tax was due, at just such a price as would defray the tax and the expenses of the sale, all or nearly all of these tracts of land, passed into the hands of residents in the colony, or at least of persons who were known and might be easily found. It is stated by Mr. Kerr, that there was great collusion among the buyers at these sales; and there is no doubt that they were in effect a measure of confiscation; but it must be allowed that it was more for the advantage of the colony that these lands should be held by persons who would sell them, even at high prices, than that they should be altogether unattainable. Here, however, the advantage of the tax ceased. The quantity of land actually held in a state of wilderness has not been diminished; and the persons who have purchased at these sales are generally disposed to think that, as they have paid so small a sum for the land, they can afford to wait until they obtain their price for it. The estates of some wealthy landowners have been very greatly increased, but the improvement of the country has been in none, or but in a very limited degree, promoted by the operation of this tax.

This concludes the list of the different measures adopted to prevent, or to cure those evils which, in the language of the instructions of 1763, arose from 'the granting of excessive quantities of land to particular persons, who have never cultivated the same, and who have thereby prevented others more industrious from improving such lands.' All these measures in their turn have failed. Excessive quantities of land have been and are owned by persons who never intended to cultivate them, and who, in spite as it would seem of the plainest dictates even of their own interest, have closed them against those by whom they might have been improved. The consequences of this state of things are detailed in the evidence appended to this report. To use the words of Mr. Kerr, inconvenience is a very faint term to employ in describing its results. Capital and labour have been wasted; settlement has been prevented, or after a brief trial the attempt has been abandoned; immigration has been checked, and of the

immigrants who have reached the colonies, more than half have sought a refuge in the United States ; there are not, and there cannot be, any efficient means for the administration of justice, for education, for religious instruction ; few public works are undertaken, and those which have been commenced are carried on languidly and wastefully ; and there is everywhere a lamentable deficiency of all those circumstances which indicate or advance civilization. It would be perhaps beyond the truth to attribute all of these evils to the manner in which the land has been disposed of. Other causes have no doubt contributed to produce this result. But incontestably the main and primary cause has been the profusion of Government in the disposal of the public lands.

That the colonies should be left in such a position as that which all the evidence concurs in describing, cannot assuredly be contemplated for a moment. Still less can the English Government persevere in encouraging emigration to these Provinces, unless perhaps in the case of those who, having no wealth but their labour, can without loss leave the colonies for the United States, as soon as they discover that in the latter the remuneration for labour, and the prospects of industry, are greater than in the former. If the Imperial Legislature will not devise a remedy for the evils which the Imperial Government has occasioned or sanctioned, at least it is the imperative duty of the Government of the present day to refrain from adding to the numbers of those who, having been tempted by the offer of land, or induced by false or partial representations of the circumstances of the colonies, have been led to emigrate to their ruin. In fact, for the purposes of colonization, all these colonies may be said to be perfectly valueless at the present time. With the single exception of New Brunswick, the quantity of ungranted land remaining at the disposal of the Government, bears but a small proportion to the waste land the property of individuals, and is far less available for the purpose of settlement. And even in New Brunswick, the 11,000,000 acres remaining at the disposal of the Crown cannot be profitably occupied while the four-and-a-half millions which have become private property remain uncultivated. Until the granted wastes shall be filled up with population, and intersected by available means of communication, Government is necessarily restrained from the exercise of one of its most important functions, by the risk of injuring those whom it designs to benefit. It will be expedient, doubtless, that some measures should be taken

to regulate the future disposal of the waste public lands; but this can be of no immediate advantage. The wisest measures for the future must be nugatory until the evils of the past have been remedied; when this is done, it will be time enough to determine the future proceedings to be adopted in reference to this property.

It may be urged that this is a matter chiefly concerning the colonies; one, too, upon which they have borne impatiently the former interference of Government, and with regard to which, therefore, they would be disposed to resent any legislation by the British Parliament. I have already referred to the general grounds upon which this objection rests; but I may here call attention to the different feeling with which the colonists might be expected to regard a measure of the Imperial Legislature, of which the motive and object were seen to be the removal of the very circumstances that have occasioned their complaints, from that excited by those proceedings of the Imperial Executive to which these circumstances have been owing. But the mere anticipation of the possibility of such an objection, can form no ground for refusing to entertain the subject; and the concurrent statements of individuals of almost every class in the colonies, landholders as well as others, show that the necessity of some remedial measure is felt, and its advantages fully appreciated. There may be some interests in the colonies as well as in England opposed to such a measure, but this rather forms a reason for the interference of Great Britain, by whose policy these conflicting interests have been created. The condition of the colonies, too, demands that some effort should be made; and it is neither prudent nor just that the country that has occasioned should shrink from repairing the mischief.

Tax upon Wild Lands.

It appears that any plan that can be proposed must partake of the nature of one or the other of the two measures by which this has been already attempted. The one is the process of escheat; the other the imposition of a tax. The effect of the former would be to re-invest in the Crown large tracts, in respect of which the conditions of the grant have not been performed; of the latter, to raise from the land a revenue for the improvement of the country, by means which would at the same time induce the owners of the wild land to make some effort to settle and improve their property, and which would facilitate the success of their endeavours.

It must be confessed that the failure of all the attempts that have been made to carry the former plan into effect, forms no sufficient argument against its employment for the

Tax upon Wild Lands.

future. The measures adopted for the purpose have been so incomplete and desultory, so partial in their scope, and inadequate in their machinery, and so completely without any guarantees for the wiser disposal of the land which might be thus recovered for the public, that their ill-success proves nothing against the principle of the proceeding. But there are in the circumstances of the colonies, and in the nature of the conditions imposed upon the grants, reasons which appear to render the adoption of any such plan inexpedient for the future. In many cases the fulfilment of the conditions upon which grants were made, has been rendered impossible by the Government. In the two Canadas especially, the Crown and clergy reserves were alone sufficient to render the settlement of the townships, according to the terms of the grant, absolutely impossible; and when the injury inflicted by the manner in which these reserves were laid out, was pointed out by the Provincial Government, their remonstrance was unheeded; and a plan, which their experience of its results led them to condemn, was maintained, in spite of their protest, by the English Minister to whom their complaints were addressed. To compel the forfeiture of grants on account of the non-performance of impracticable conditions, would be ungracious if not unjust, even if they remained in the hands of the original grantees; and when, as is the case in the majority of instances, these grants have passed by sale into the hands of other parties who were emboldened to purchase by the tacit acquiescence of the Government for a period of from 30 to 40 years in the non-performance of the conditions, the hardship of such a step would be greatly enhanced. Although it is true that the present holders can have acquired no rights which were not possessed by those through whom they derived their titles, yet they may fairly be considered as having an equitable claim, which the Government is bound to respect. The same arguments will apply more or less to all the other colonies, with the exception, perhaps, of Prince Edward Island, where the Provincial Government has never desisted from endeavours, which have been unhappily defeated by the exercise of the powers vested in the Home Government, to enforce the performance of the conditions, or, in default, to resume the land. In many cases, also, the conditions have been so far performed as to render it impossible to escheat the grant, although none of the inconveniences which it has produced have been removed. In almost every instance the cultivation of one-fourteenth of the land was the extent of improvement required by the grant; and thus, out of a block

of 14,000 acres, 13,000 may be absolutely waste, and the owner yet have an absolute and indefeasible title. From the evidence of Sir R. George it appears that this is the case to a considerable extent in Nova Scotia, and it appears also to be the case in many instances in Lower Canada. In Upper Canada no conditions of any sort were imposed upon the early grants, which comprise by far the larger portion of the granted land; and in those cases in which conditions were imposed, the cultivation of 1-25th part of the grant was all that was required; and this, as it was a preliminary condition, has in most instances been performed. It appears therefore that the process of escheat would, under the circumstances, be one of doubtful justice, and of very imperfect benefit. In many of the cases in which it could be employed, it would punish innocent individuals; and it could not be employed to an extent sufficient to produce any public advantage. Tax upon Wild Lands.

A tax upon wild lands, therefore, appears to be the only measure left open to the Government for the accomplishment of this most important object. Every witness who was examined upon this subject, concurred in the opinion that the imposition of such a tax was absolutely necessary. The late Chief Justice of Quebec was the only individual who objected to a general and uniform tax, preferring, with a natural partiality to the institutions of his native country, local assessments for local purposes. As this proposal will come under notice in the consideration of the manner in which such a tax should be levied, I shall not dwell upon it here. I refer to it merely in order to call attention to the fact, that though Mr. Sewell differed from the other witnesses, as to the authorities by whom the tax should be imposed and expended, he agreed in the necessity for its imposition. Every other witness upon this point, including many persons in each colony who had seen most of the working of the present system, many of high official station, and many of the largest landholders, concurred in representing it, not merely as desirable but necessary. I would refer especially to the evidence of Mr. Stayner, deputy Postmaster-general, himself probably the largest landholder in the two Canadas, and whose testimony is the more valuable, because it was not delivered *vivâ voce*, in answer to questions then presented to him for the first time, but in writing, after repeated conversations, in which all the principles of the plan embodied in his evidence had been suggested to him, and he had deliberately considered their practicability and value.

The effect of a tax upon wild lands, the whole proceeds of

Tax upon Wild Lands.

which should be applied in improving the communications and facilitating the settlement of the country, would be to remove some of the worst evils at present produced by the existence of the immense tracts of wilderness between, and in the midst of, the settled districts, and to diminish the quantity of the land retained in a wilderness state. The former, by opening roads in all needful directions for the transport of produce, and the latter by inducing and enabling the present proprietors of the wild land to settle or dispose of their property. The opening of roads is the one thing, without which it is impossible that a new country can thrive; and the obstacles placed in the way of making and maintaining roads by the waste granted land, constitute the most serious injury that the large tracts of such land inflict upon the province. The separation of settlers is undoubtedly under all circumstances a great source of injury. The existence of available roads, however, very greatly mitigates, though it cannot altogether remove this evil. In many parts of the country, settlers within two miles of each other are really more separated than they would be if living ten miles apart upon one of the leading roads. In the evidence of Mr. Hyndman, an instance is given in which, owing to the want of a bridge, settlers within two or three miles of the principal town in the district, have been unable to communicate with it for three days at a time. Where there are no roads, it is vain for the settler to raise any produce beyond what is required for his own consumption; for, when raised, the expense of carrying it to market, would be far greater than the amount for which it could be sold. The evidence taken in every province abounds in testimonies, direct and indirect, to the truth of these representations, which will be abundantly confirmed by the personal knowledge of every one who has had any acquaintance with our colonies, or the new States of the Union. It is the assumed application of a wild land-tax to the making of roads, which reconciles the landed proprietors to its imposition; and it is the same cause which induces the settlers to look to it as a means of relief. The former acquiesce in it as a means of raising, though at first at their own expense, the value of their, at present, almost useless possessions; the latter desire it, in order that the productive industry of the country may no longer be fettered by the mass of unproductive property. But the mere construction of roads is insufficient to remove the evils I have described. So long as an individual can retain his land in a wilderness state without cost, there is always a considerable risk, lest, in his endeavour to secure

a large ultimate gain, he should overlook or disregard the inconveniences produced by his refusal to dispose of it upon reasonable terms. There can be no doubt that this is the case at present. Many of the holders of very large tracts are glad to sell whenever they can find a purchaser; but there are many who will not sell except at prices altogether disproportioned to the present value of their land, and who, whenever applied to upon the subject, content themselves with declaring that they can afford to wait; that a few years is of no importance to them; and that they feel assured, before many years have elapsed, the progress of settlement will enable them to obtain the price they now ask. Without wishing to interfere with the right of control, which every individual ought to possess over his own property, it can hardly be doubted that the present is a case in which some measure should be adopted, in order to prevent such an exercise of this right as is inconsistent with the public interest; and the imposition of a tax appears to be the best and most effectual means of accomplishing the object. There may be some to whom such a tax would be unpalatable at first; and there may even be some upon whom it might press unfairly; but no measure could be proposed, having a tendency to remove the evils complained of, at once so popular and so equal in its operation. Tax upon Wild Lands.

There is one preliminary question to which it is necessary that I should advert. By whom, and in what manner, ought this tax to be raised? Is it to be left to the inhabitants of particular districts to regulate its amount and application, or to be imposed by a central authority? The practice of the United States appears to be in favour of the former plan, which is advocated by the late Chief Justice of Quebec; but I am nevertheless of opinion, that the latter will be found by far the more satisfactory and useful proceeding. The evils, which a wild land-tax is intended to remedy, are neither local nor partial. They are not confined to one colony, nor to separate districts of each. With very few and unimportant exceptions, every part of every colony is affected by them. There is no reason, therefore, founded upon their merely local character, for deriving the means of remedy from local sources, or entrusting their application to local authorities. It is obvious, too, that one central authority might so regulate its operations as to provide for the advantage of each province and district, by a plan which would be for the advantage of the whole; while a number of separate and independent authorities might so conduct their proceedings as to produce

Tax upon Wild Lands.

no combined and harmonious result. The lines of road, for instance, selected by two neighbouring districts, each having an exclusive reference to the present state, or to what was supposed to be the individual interest of that district, might possibly be such as could not be made to coincide ; and they might each be such as, with reference to the prospective interests even of the district by which the lines of road were selected, ought not to be made in the first instance. One of the most injurious features in the legislative proceedings of the North American colonies, is the spirit of local jobbing which prevails to an almost equal extent in all of them. To give to the legislature of each colony, or to the present local authorities, the application of the funds to be raised by this tax, would be to give a fresh stimulus to the practices which at present prevail, and to incur an imminent hazard of having the whole proceeds of the tax employed in useless or purely local purposes, or wasted by the manner in which even useful works were accomplished. And even if this consideration might be safely disregarded, or the evil were considered as one for which a practical remedy might be found, it is obvious that in proportion to the magnitude of the operations carried on, is the efficiency of the superintendence that might be secured, and the economy with which the works might be conducted. The making of roads through a township or a small district could not justify the employment of a really qualified engineer to superintend the work ; and if made, as such roads have always hitherto been, under no proper control, the work is at once more costly and less durable than it ought to be. These considerations, however, refer solely to the application of the funds. Still more forcible reasons appear to require that the tax should be imposed by a central authority. If the imposition and amount of the tax be left to such local authorities as exist at present, then in very many cases the persons who will have to decide upon the amount of the tax to be levied, would be the very individuals upon whom it would fall ; and it is not unfair to presume that their view of what they ought to contribute would rather err on the side of inadequacy than the reverse. Or if the inhabitants of any district were to be the assessors, they might, in a natural impatience under the evils they have sustained, err on the other side, and impose a tax, the amount of which would tend to defeat the object for which it was levied. In one district, a proprietor might be called upon to pay an assessment far below, and in another as far above, what would be required by the real necessities of the case. There

would be neither uniformity nor permanence in any of the arrangements; no measures to be provided for out of funds raised in this manner could be undertaken with confidence or carried out with vigour; there would be a certainty that the objects for which a tax was imposed would be imperfectly obtained, and great risk that they might be altogether defeated. On these grounds, and still more perhaps on account of one of the purposes to which it appears expedient that the proceeds of such a tax should be applied—that of being part of the security for a loan to be raised for the general improvement of the country—I think that it ought to be imposed and its continuance guaranteed by a central authority; and, as it must be applicable to all the colonies, that authority appears to be fitly the Imperial Parliament. Tax upon Wild Lands.

The proper amount of the tax is also a topic of great difficulty. There is no recognised standard of comparison by which it can be estimated, and the evidence of opinion on the subject is various and conflicting. Mr. Stayner recommends that the amount should be $\frac{1}{2}d.$ currency per acre at first, and that the tax should be doubled upon non-payment, till, in the event of its being unpaid for six years, it would amount to $2d.$ currency per acre for the whole period. A halfpenny per acre is about the ultimate amount of the tax in Upper Canada, and Mr. Boulton and Mr. Ranken concur in representing that amount as far too low. The only standard of comparison that I can discover is, the amount of the burdens borne by the actual occupiers in Upper Canada, the only colony where a wild land-tax at present exists. These appear to be, on a farm of 100 acres—

	£	s.	d.
Statute labour, about	–	15	–
Tax upon cultivated land, say 30 acres	–	2	6
Wild land-tax upon 70 acres	–	1	2
	£ –	18	8

or a fraction more than $2d.$ per acre. This, I am inclined to imagine, would be a fair amount. It is, perhaps, rather too low, but it is more expedient to err in that direction than to excite a just discontent by making it too high. The tax should be imposed upon all the waste lands in the provinces, the property in which is not at the present time in the public.

But as the land in the different colonies varies very considerably in value, it would be unjust to compel the payment of this tax in money from all proprietors. In order, therefore, to prevent as far as possible any inequality in its operation,

Tax upon Wild Lands.

it would be expedient that all proprietors of wild land should be allowed to pay this tax in land; such land to be taken by the Government at the rate of 4*s*. per acre, in lots of not less than 100 acres, and upon the certificate of a Government surveyor, that the land thus given up was of equal value in quality and situation to the average of the land upon which the tax was levied. And in the event of the tax not being paid for two years, the Government should be at liberty to resume the land in respect of which default was made; and the land thus resumed would then be open to purchase upon the same terms as all Government land; paying to the owner of the land, when a sale was effected, 4*s*. per acre for the amount sold, after deducting the tax due when the land was resumed. It will be seen that this price of 4*s*. per acre is less than what is proposed as the future price for Government land; but this is the value affixed by the Assembly of Upper Canada, to the claims of the U. E. loyalists and militia, and is greater than the real average value of wild land in any colony at the present time. By such an arrangement the interests of all persons would be consulted. Those who imagined that their land was at the present moment, or shortly would be, of greater value than 4*s*. per acre, would of course pay the tax; and those whose land, from its situation or the nature of the soil, was less valuable, would of course make the payment in land.

This measure, if fairly carried out, would in all probability remove, in the course of a very brief period, the evils under which the colonies now labour, so far as these have their origin in the mass of wild land in the hands of private individuals; and their result would be as advantageous to the owners of these lands as to the community at large. But there is one objection to the principle of such a tax, to which it is necessary to advert, because it has been urged by the proprietors of Prince Edward Island, in opposition to a bill which, as has been before stated, was recommended to the Assembly of that island by Lord Stanley, when Secretary of State for the Colonies, and which received the sanction of all the branches of the Provincial Legislature; and because the force of the objection appears to have been recognised by Her Majesty's Principal Secretary for State for the Colonies, who, in consequence, advised Her Majesty to refuse or suspend her assent to such bill. The objection is, in effect, that any such tax proceeds upon a wrong principle; that productive property is the only fit subject of a tax, and that this wild land, as unproductive property, ought to be exempt. It is

not necessary here to enter into a discussion of the soundness of the principle thus laid down, nor to do more than just notice the fact, that the tax in question was only one-fifth per cent. upon the value which these proprietors put upon their wild land. Nor will I urge, what might fairly be urged, that a tax of this sort might be justified upon the mere ground that it was intended for the abatement of a nuisance; the existence of which, for upwards of half a century, had rendered this island the least prosperous, probably, of all the North American colonies, in spite of its great natural advantages. But the fact is, that any such tax, if properly applied, either to the formation of roads, or towards providing for the general government of the province, accomplishes an object, in which every individual having property in the province has a direct and immediate interest, and in which none are more interested than these very wild-land proprietors, the whole value of whose property depends upon the extent to which such objects are effected. It is, indeed, a singular plea, that those whose industry gives value to a country should be highly taxed, in order that those who have done and determine to do nothing for this purpose should—for that is the necessary result—obtain a more certain market and a higher price for the property which they hold. It may in truth be said, that the wild-land proprietors are even more interested than any other class in the imposition of such a tax. Paying, as they will, and as they ought, at first rather largely in proportion to the present value of their land, they will almost immediately find that the value of their property is increased in a very far greater ratio; while, as the alternative, if no such measure be adopted, they will discover that, though the nominal value of their land may continue the same, there will be every year less opportunity of finding purchasers. It may be well, too, to contrast the opinion formed by landholders who reside upon the spot, and who witness the actual operation of the present system, with that of these gentlemen who judge only from report; and when it is found that the one advocate, as essential to their welfare, a measure which the other deprecate as ruinous, no one can, I imagine, hesitate in preferring the former opinion.

Tax upon Wild Lands.

I pass now to the consideration of the measures which should be adopted in reference to the public land which yet remains ungranted, with a view to the prevention for the future of circumstances similar to those that the proposed tax is designed to remedy. Any system adopted in the disposal of the public land should be simple, uniform, and equal;

Crown Lands.

Crown Lands.

and while it prevents the acquisition of land, except by those who intend to use that which they acquire, should afford every facility of selection and acquisition to such persons. No system hitherto adopted, in any colony, and the present probably in as little a degree as any, appears to possess any of these characteristics. The system now in force is complicated, irregular, and partial; it neither checks the acquisition of land by those who do not intend to improve it, nor facilitates such acquisition by those who do. The evidence of Mr. Davidson, of Mr. Kerr, and of Mr. Christie, with regard to Lower Canada; of Mr. Sullivan, of Mr. Thornhill, of Mr. Hawke and of Mr. Boulton, with regard to Upper Canada; of Mr. Morris and Sir R. George with regard to Nova Scotia; and of Mr. Baillie with regard to New Brunswick; describe with more or less minuteness the general objections to the present system. None of these gentlemen urge any merely theoretical objections to the principles upon which the present plan is founded. They all speak upon a practical experience of the manner in which it operates; and some of them in particular, from their official character, and their long and familiar acquaintance with the details of the system, are entitled to especial weight when they come forward to expose its errors.

There are three particular defects in that system, to which it appears needful to advert for the purpose of explaining the grounds of the plan which I shall recommend in substitution of that now prevailing. These are, the want of sufficient liberty of selection; the facilities afforded for a premature or excessive acquisition of land; and the difficulties and delays in obtaining a title after the purchase is completed by the payment of the whole purchase-money.

The plan contained in the Treasury instructions, under which the practice of sale was introduced, and continued to the present time, by making the Governor the exclusive judge of the quantity which ought to be put up for sale; and by requiring that all sales should be by auction, has necessarily prevented any freedom of choice on the part of the purchasers. It appears, for instance, that in Upper Canada less than a fifth of the disposable Crown land has ever been open to purchase; and although it may be, and doubtless has been the case, that the lots selected have been those which, in the opinion of the Governor, directed by the Commissioner of Crown lands, it would be most advantageous that settlers should occupy, it may fairly be doubted whether the settler would not be a better judge of the tract of land suited for his own

purpose than any other individual: especially when that individual, having probably little local knowledge, could only be guided by vague general rules. It is true, that, as stated by Mr. Radenhurst and Mr. Davidson, an individual desiring a particular lot, might make a special application to have it put up for sale, and that his application might be favourably received by the Governor; but leaving on one side, as not likely to occur, the chance of his application being rejected, he would have to wait for some considerable period, while the lot was advertised for sale. During this period his expenses might far exceed the price to be paid for the lot; and there would be a great risk of his being at last overbid by some person whose attention had been drawn to the tract he desired to purchase, solely in consequence of his application. Without dwelling on the abuses of the system, such as are described by Mr. Thornhill (which must nevertheless have been exceedingly injurious), because they result from a violation of the rules by which the Commissioner of the Crown lands ought to have been guided, I select two instances of this result of the plan of sale by auction, at the discretion of the Governor. One is described by Mr. Kerr, in which applicants for a special survey and sale, after obtaining the consent of the Governor, and paying the expenses of survey, did not, in consequence of the system of auction, obtain more than a tenth of the land for which they had applied, the remaining nine-tenths being purchased by speculators. The other is the case of the sale in Gaspé, referred to in the evidence of Mr. Davidson and of Mr. Christie. This case justifies a particular notice, because it exemplifies very forcibly the defects of the system. It appears that in 1836 an application was made for the special survey of 92,000 acres of land in the district of Gaspé, by some gentlemen, who undertook to purchase at least 50,000 acres of the land surveyed. The application was duly transmitted by the agent for the sale of public lands in that district to the Commissioner of Crown land. That gentleman, on the receipt of the application, recommended to the Governor, that 35,000 and not 92,000 acres, should be surveyed and offered for sale. The Governor approved of this recommendation, and gave the authority required. At this point the matter would probably have rested, if the decision of the Governor had been acted upon, since the applicants would not have thought it worth while to incur the expenses contemplated for an amount of land inadequate to the purpose for which they desired to purchase it. In this case it would have been an instance in which the discretion vested in the Governor would have been

Crown Lands.

Crown Lands.

exercised in a manner to prevent the disposal of the public lands. But the Commissioner of Crown lands, upon receiving the authority for this limited sale, immediately directed the agent to survey and sell the whole amount of 92,000 acres. This was accordingly done. At the sale the original applicants purchased less than two-thirds of the land put up to auction; the remainder being bought by rival speculators. Cases of this nature, and especially such as the former, must necessarily tend to deter intending purchasers, and to retard the settlement of the country. And these cases, in both of which the object of the special applicants was to a very considerable extent defeated, appear to have been the only two instances of special applications for the purchase of lands not included in the regular Government sales.

I shall advert hereafter to the operation of the system of sale by auction, and to the grounds upon which it has been defended, for the purpose of explaining the reasons which induce me to recommend that it should be abandoned for the future. I have referred to it at present only for the purpose of pointing out this particular injurious consequence of the system.

The practice of accepting payment by instalments for the land sold by the Crown, appears, from the concurrent testimony of those who have had the most extensive opportunities of witnessing its effects, to have operated very injuriously. It has induced many people to become holders and cultivators of land prematurely, before they had either the capital or the experience to fit them for this new position. Mr. Sullivan, Mr. Thornhill and Mr. Hawke, especially the last named gentleman, whose office as chief agent for emigrants in Upper Canada has given him peculiar facilities for witnessing the working of this practice, describes forcibly its evil results. To use the words of Mr. Hawke, 'it has the effect of converting a number of useful labourers into indigent and useless farmers.' The position of such persons appears to be in every respect inferior to that which they had previously occupied as labourers; and while they suffer from the want of the requisite knowledge and capital necessary for the due cultivation of their land, the colony is injured by the loss of valuable labourers. A very few years would have sufficed to place them in a condition to have gone upon their farm in comfort, and with the means of cultivating it profitably; and they would have waited until those means were at their disposal had they not been tempted by the small sum which sufficed to give them a temporary and insecure possession of 100 acres

of Government land. In Lower Canada the low price at which Government land has been sold (a great part at less than 3*s*. 6*d*. per acre), has led to the acquisition of very large tracts by individuals who hold them merely in the hope of being able at some future day to sell them at a profit, without any intention of improving them in the mean time; and in New Brunswick and Nova Scotia a similar result appears to have been produced. Crown Lands.

The difficulties in the way of obtaining a title in Lower Canada are described with great force by Mr. Kerr. It appears from the testimony of the same gentleman, that fifteen months is the average time occupied in obtaining a title; and as the settlers who purchase land generally reside at a considerable distance from Quebec, where alone a title can be procured, it is absolutely necessary that they should employ an agent; and this necessity must very greatly enhance, to purchasers of a single lot, the cost of their land. In all the colonies the same central system prevails, and in all similar inconveniences are experienced; though the singularly useless complication of process which prevails in Lower Canada, and the inadequate scale upon which the land granting offices in that Colony are constructed, especially in the inferior departments, have made the actual time occupied in obtaining a title far greater than in any other province. In Upper Canada this evil has been palliated by a recent Act of the Provincial Legislature, which makes it imperative upon the Commissioner of Crown Lands to transmit free of expense to the agent of every district, the title for all land which may have been sold within the district.

In recommending a plan for the future disposal of public lands in all the colonies, the main feature of which is that they shall be sold at a fixed, and not at an upset price, it may be thought necessary that some reason should be given for such a departure from the practice which has been so long established in each colony, and which apparently prevails in the United States. I say apparently prevails; for in truth the system of auction in those States is even more nominal than in the British provinces. It is true that all the public land in the Union is in the first instance offered for sale by auction; but the right of pre-emption allowed to actual occupants takes from under the operation of this system nearly all those lots which would be likely to excite competition. And whenever the land has been offered for sale, it is open at the upset price to every applicant. I am not aware that any accurate information exists upon this

Crown Lands.

subject, but from what I could learn from individuals who had resided for a considerable period in those new States of the Union where land speculation was most rife, the proportion sold above the upset price was so small as to make the system practically a sale at an uniform fixed price.

But whatever may be the practice established by precedent or sanctioned by usage in the colonies or elsewhere, the proper object of inquiry appears to be, whether the assumed or real advantages of that system are sufficient to outweigh the inconveniences it produces ? It is by this test alone that any system can fairly be tried ; and if this test is applied, it will, I think, appear that the present system is one that it would be wise to abandon. Even prior to any practical experience of its working, I believe that it might have been concluded that the system of auction was one which was not applicable to the circumstances of a new country ; and experience has supplied the proof that such a conclusion was well founded. It is probable, indeed, that the practice was adopted partly with a view to guard against favouritism, but chiefly because of the very irregular practices which it superseded, and which had left at the disposal of the Crown, lands of such very unequal value ; and not from any opinion of the general utility of the method.

Even if the object of the Crown in the disposal of the public lands had been, which it would seem it ought not to be, the raising of the largest possible amount of revenue from this source, the very nature of the property to be disposed of would make the system of sale by auction inadequate to this end, unless indeed there had been coupled with it such a limitation of the quantity of land brought into the market as would have occasioned a high degree of competition amongst the buyers. But in the way of such a result there were two insurmountable obstacles ; the one, the existence in the colonies of tracts of land the property of private individuals ; and the other, the facilities of acquiring land in the neighbouring States. Both of these rendered it impossible that Crown lands should be sold above a certain price ; and the price for which they might fairly be sold would have been with the utmost certainty secured by the adoption of a fixed price. But there was in none of the colonies any such limit of the quantity exposed for sale as would have been required to produce competition. The consequence has been, to use the words of the Commissioner of Crown Lands for Upper Canada, 'that the system of sale *by auction* is a cumbrous dead letter, from which the public receives no advantage, while the settlers

are seriously delayed in their locations.' In all the colonies the system appears to have been attended with similar results. Mr. Davidson, the Commissioner of Crown Lands for Lower Canada, says, that the number of lots for which a higher price than the upset price has been obtained, do not amount to more than 1-39th of the whole; so that if the system of selling by auction were adopted for the purpose of raising a revenue, it must be considered to have failed in that respect. Crown Lands.

But allowing for a few unimportant exceptions, and they would be exceedingly few at the present time, the very object for which the plan of selling by auction in certain cases is now defended, is one which Government ought not to pursue. The opportunity of obtaining a favourable lot at the fixed price of all Government land, is the proper reward of the trouble and sagacity of the individual who has discovered it, and the appropriate stimulus to well-directed incursions upon the wilderness. But the practice of selling by auction tends to deprive such persons of the natural fruits of their skill and enterprise, in order that some insignificant pecuniary advantage may be reaped by the public. It is true that a mill seat, or a favourable situation for a town, may, under the present system, sell for ten or twenty dollars an acre, instead of one or two; but the chance of being outbid at auction must deter persons from attempting to discover such locations, and check in a degree which it is not easy to appreciate the general enterprise of the colony. Gaining some inconsiderable fraction upon the aggregate amount of sales, Government still further represses that spirit of adventurous effort which there are already too many circumstances in the present position of the colonies to check. The profit may be counted in dollars; the loss it would be difficult to estimate. It would, in fact, appear, that all the land in the colonies might be sold by auction with less public and personal injury, than those lots which, singularly enough, have always been selected as the portions of the province which were to be alienated with the greatest reserve. Agreeing in the opinion pronounced by all witnesses as to the inutility of the system of auction in those cases in which it has been proved to be inoperative, I regard it as especially injurious in those cases in which it has produced its intended result.

While for the reasons thus stated, it appears expedient that the price of public lands should be fixed, instead of an upset price; there are other reasons which seem to lead to the conclusion, that it should be uniform instead of variable. It is undoubtedly true, that the present value of public lands

Crown Lands.

is variable in the highest degree. Twenty pounds an acre might be more advantageously paid for some, than a shilling per acre for other lots. Depending for its value, as land must in all, but more obviously in new countries, upon its vicinity to a market, and the means of transport available for its produce, such a difference necessarily exists. It may, therefore, appear impolitic, and even unjust, to affix the same price to lands so different in value. But the land which is of little value to a settler, because of its remoteness from settlement, is land which for his interest, no less than for that of the community, it is desirable he should not occupy. The opposite system appears curiously contrived, in order to tempt individuals of the poorer class to settle themselves in situations in which their industry must be wasted in protracted and unaided struggles against obstacles which no industry can suffice to overcome. The results that must be produced by such a practice are described by Mr. Sullivan, in a passage referred to above, where he is speaking of the effect of the system of selling by instalment, and by Mr. Hawke, where he describes the case of a settler who had got 13 bushels of corn ground, at an expense in time and labour, in carrying it to and from the nearest mill, of 5*l.*, being far more than the selling price of wheat in the district. It is obvious that land thus situated, whatever might be its natural fertility, could have no real value for the purpose of settlement ; and that the interest of individuals, as well as that of the community, would be consulted by the adoption of measures which would prevent its acquisition, until population and markets had so increased in the neighbourhood as to render its occupation desirable.

It has indeed been argued with some plausibility, that although an uniformity of price for all public lands may be advisable as a general rule, there are nevertheless circumstances in the actual state of the North American colonies, produced by the past conduct of Government, which would render the immediate application of any such rule highly unjust. The argument assumes, that the owners and occupiers of land, both in those districts where the value of land is at present greatest, and in those where it is least, would be injured by the adoption of any uniform price. The former, because it would diminish the value of their land by enabling settlers to obtain Government land at a lower price than the actual selling price of wild land in the district. The latter, because settlement would be checked by the removal of the inducement to settlement now furnished by the comparatively low price of land in their neighbourhood. It is not perhaps necessary to go

into any examination of the principles upon which this argument rests, because it appears to proceed upon an entire misapprehension of the facts of the case. In Upper Canada especially, where the difference in the value of land is most striking, the quantity of land remaining at the disposal of the Crown is so small as to render the operation of a fixed and uniform Government price upon the selling value of wild land, the property of individuals, almost inappreciable. It has been already stated, that out of 17,000,000 of acres, comprised in the surveyed townships, of which probably nearly 15,000,000 are still unoccupied, very little more than 1,000,000 acres remain at the present moment in the hands of the Government; and these are the refuse lands of the colony, for which no person entitled to a grant has hitherto thought it worth his while to apply. The settlement of the colony and the price of land in any district, can therefore scarcely be influenced by the operations of Government in the disposal of its waste lands. They depend far more upon the price demanded by private holders. It is very probable that all or nearly all of this remaining public land is of such a quality as to render its present occupation unadvisable. A seventeenth part of the land of a new country is even a small proportion for refuse and unavailable land. Whatever price might be put upon this land by the Crown, even if it were all of a fair average quality, would affect in a very slight degree the general value of land in any district; and assuming its quality to be, as is stated by Mr. Radenhurst, very inferior, its price would have no immediate operation of any sort. Unless, indeed, that by fixing a price proportioned to the present value of such land, settlers might be induced to acquire such land rather than other land, more highly priced but more fertile, and thus the productive industry of the country be directed precisely to those portions of its soil which would yield the smallest and most niggardly returns. A period may be expected to arrive when the growth of population, the vicinity of markets, the facilities of obtaining manure, and the diminished cost of transport, will render the occupation of these less fertile lands more profitable to the individual, and therefore to the community, than that of lands more fertile, but of a less advantageous position. When this period arrives, the price affixed to them will form no obstacle to their cultivation; but until this is the case, it would be a clear violation of the duty of Government to hold out any peculiar inducement to settlers to establish themselves upon such lots. Crown Lands.

Crown Lands.

Nor must it be forgotten, in any consideration of the probable effects of the plan suggested for the adoption of Government with regard to the future disposal of the public lands, that the proposed measures do not stand alone. They form part of a large and comprehensive measure, one main object of which is to produce a great degree of equality in the value of all wild land, whether the property of individuals or of the Crown, by giving equal facilities of communication to every part of the country. Those districts in which the price of land is lowest, are those in which there is the most striking deficiency in all the circumstances upon which the value of land depends. To remove this deficiency will have a far greater effect in attracting, than any rise of price could have in deterring settlement. And even if the immediate result of any uniformity of price should be to attract new settlers to the more thickly-peopled districts, the present inhabitants of the less populous parts of the country would gain much more from the making of roads in their neighbourhood, not merely on account of its removing one of the chief obstacles to their progress, but also because of the market which would be thus brought home to their door, by the expenditure of the Government, in these public works, than they could lose in the temporary check to settlement assumed by the argument to be the result of the plan.

With respect to the other aspect of the question, the supposed tendency of an uniform price to lower the value of land in those districts where at present it is highest, it may be doubted whether any such price as would be fixed by the Government could have that effect. Population is one of the chief elements in the value of land. Where population is most dense, there invariably the price of land is highest. Any addition to the population of a district must therefore, it would appear, have an influence in raising the value of land; and this to a much greater extent than the lower price of Government land could have in depressing it. In proportion too as population is dense at present, the quantity of public land yet remaining undisposed of must be inconsiderable; and thus where the assumed injury would be greatest, the power of inflicting it would be least. The argument which has been urged against the adoption of an uniform price appears therefore not merely to be founded upon a misconception of the real facts of the case, but to be erroneous, even upon the assumption that the facts are such as it presupposes.

For, further, the price to be fixed as that at which all public land is to be sold, ought not to be a mere arbitrary

amount. It should be just that price which, having reference to all the circumstances of the country, appears most calculated to facilitate settlement, and at the same time to check both an excessive and a premature acquisition of land by settlers. It ought to be so low as that no one who possesses the means of improving the land, should be deterred from purchasing it, and so high that no one should be tempted to acquire it before he possesses these means, or in greater quantities than his means will enable him to occupy with profit. In the North American colonies also there is a further consideration which must be kept in view in fixing the price, which it is to be feared will in some degree interfere with the latter object. The price of land must not be so high as to drive purchasers into the United States, in order that they may avail themselves of the low price at which public land can be procured there. But having in view the objects above described, it may fairly be doubted whether any consideration of circumstances, necessarily both partial and temporary, ought to prevent the adoption of such a price. Government ought not, it would appear, to affix upon any portion of the public land a price unduly restrictive of appropriation, in order to keep up the price of land held as private property; nor ought it, on account of any supposed check to settlement, to fix a price which would encourage the appropriation of excessive quantities of land, or tempt individuals to settle themselves upon land, which they had not the means of cultivating. The dearly-bought experience of past years would indeed be fruitless if now, from any such motives, these worst errors of former proceedings were to be renewed in any new plan. Crown Lands.

Upon every ground, therefore, it appears expedient that the price of public lands should for the future not only be fixed but uniform.

The price required for public lands, also, should be payable at the time of sale. The practice of accepting payment by instalments, which has been continued in Upper Canada, in violation of the instructions of Lord Glenelg, besides inducing a premature acquisition of land, has the further effect of rendering altogether nugatory whatever price may be fixed upon public lands, at least with respect to that land which is purchased by the poorer class of settlers. It is stated by Mr. Sullivan that no measures can be attempted safely to enforce the payment of the arrears now due from persons of this class; and Mr. Hawke gives an instance in which Government has actually abandoned claims of this nature to the

Crown Lands.

amount of 30,000*l*. The system of sale by instalments had been tried and abandoned in the United States long previously to its adoption in the North American Colonies. It was abandoned, not merely because of the impossibility of obtaining payment of the arrears, but also because of the danger to be apprehended from the existence of a large body of settlers in all of the new States, who were supposed to be favourable to any proceedings which, by weakening the authority of the Government, might diminish its power of enforcing payment from them. Without inquiring how far any of the settlers in Upper Canada are under the influence of any such feeling, I may venture to state my opinion, that it is unwise to give to any class so powerful an inducement to assist or acquiesce in any change of Government, as is afforded by the prospect of escaping from a heavy debt, and of acquiring an absolute instead of a qualified and insecure title to the land they occupy. I therefore recommend, that the whole purchase-money of public lands should be paid at the time of purchase.

At this uniform price, all public land should be open to purchase by everybody in unlimited quantities. The attempt to fix a limit to the amount which an individual may acquire, must indeed be always practically unavailing, because it is impossible to prevent any one who desires to become a purchaser of a quantity beyond the assigned limit, from acquiring such larger quantity in the name and through the instrumentality of others. But if it could be successful, it could have no other result than that of checking enterprise and retarding settlement. The adoption of any measure of this kind, too, is a tacit confession of the inadequacy and incompleteness of the system which requires such an adjunct. It amounts to an acknowledgment that the price of land is so low as to tempt individuals to acquire land which they do not intend, or are unable to improve. If the price be sufficient, then the larger the amount of land purchased, the more effectually will the purposes of Government be accomplished. The limitation of the quantity to be disposed of, is a cumbrous device for effecting in an indirect way an object which Government confesses itself unwilling or unable to effect directly; and like all such devices, it fails in the very cases against which it was specially intended to provide.

The ground commonly assigned for the adoption of some limit, is the necessity of guarding against the acquisition of land by speculators. In all our North American colonies, the feeling in which this practice has originated, prevails most extensively. Everywhere complaints are heard against specu-

lators; and most of the witnesses examined in reference to this subject, attributed the evils endured by the country to the extent to which speculation in wild lands had been carried. It is difficult to suppose that an opinion so deep rooted, and so widely diffused, could be altogether unfounded in fact; but that it should have any substantial foundation, marks most forcibly the extent to which the lavish proceedings of former Governments have affected the prosperity of the colonies. In the United States of America, much of the prosperity of the new States is attributable and is attributed to the operations of speculators and land-jobbers. More money has been invested, and with greater profit to the individuals and the community, in this, than probably in any other way. But the American speculator is actively employed in endeavouring to give value to his land; while the Colonial speculator is content to wait passively until the gradual increase of population and the progress of settlement have effected this object for him. The former desires, and takes the means to obtain, a large immediate gain to himself; the latter consoles himself with the reflection that he has acquired a property which will be valuable to his grandchildren. The one immediately occupies himself in making roads, laying out the sites of towns, building mills, taverns and churches, and thus attracts a population, which enables him at once to secure a large profit upon his investment. The other allows the land he has purchased to lie waste, and thus not merely to remain as unattractive to settlers as when it was purchased, but to impede the course of settlement around. In proportion to the extent to which speculation is carried in the States of the Union, the growth and prosperity of the district are stimulated; while in the colonies the extent of speculation is at once the indication and the cause of stagnation and decay. But little money is invested in the purchase of land in the former country without yielding a large profit, but in the latter, large sums have been invested at a loss. It is impossible to ascribe so striking a difference in the nature and results of the courses pursued in the two countries to any difference of character in the people by whom they are adopted. This may have some effect; but the real cause of the difference is to be found in the different circumstances of the two countries, produced by the opposite practices of the Government. A colonist who should purchase land in the States would be impelled to improve it by the certainty of obtaining a large profit upon the capital thus invested, as well as by the contagious influence of the general

Crown Lands.

Crown Lands.

spirit of enterprize and progress ; while a native of the United States who should purchase land in the colonies, would be checked in any expenditure intended to increase its value, by the certainty of incurring a heavy loss. But the remedy for the evils now produced in our colonies by speculation in land, is not to be found in any necessarily unavailing attempts to deter or check speculators, but in removing the causes which give to speculation its present stagnant and repressive character. So soon as the holder of land finds that money invested in its improvement will quicken and augment the returns which he expects eventually to obtain from it, we may be assured that the work of improvement will begin ; but until this is the case, it is of course fruitless to anticipate any change in the present practice. As, however, the measures already proposed for the imposition and application of a tax upon wild lands may be expected to effect this object, with regard to lands already disposed of, and as the same measures will have a tendency to prevent for the future any similar consequences to those which they are intended to remedy, it appears that facilities should be given to speculation, rather than obstacles be thrown in its way. In fact, it may almost be said that one of the objects which Government should propose to itself in any plan for the disposal of the waste public lands, ought to be to encourage the investment of capital in the purchase and improvement of land with a view to its resale.

Not merely, however, ought there to be no limitation in the amount which any individual may purchase ; still less should there be any limit as respects the position or character of the land. There should not be, under any pretence, or for any purpose, a portion of the colony closed against purchase or settlement. Every reserve, of whatever nature, or to whatever object it may be destined, should at once be thrown open to acquisition, upon the same terms as the waste public lands still unappropriated. School and college, and clergy reserves, must, in justice to the public, be brought at once into the market. To permit of the continuance of the present, or the formation of any fresh reserves for public purposes, would be, I will not say to peril, but to prevent the success of any plan. It would indeed be an act of palpable injustice, while imposing a tax upon the proprietors of land held in a wild state, on account of the injury which their property inflicts upon the public, to keep two millions of acres in one colony still a desert. The persons upon whom the proposed wild land tax would fall, appear to be reconciled to its imposition,

because, as they conceive, it is to be part of a complete and effectual measure for the removal of all the obstacles to settlement presented by the present position of the colonies. If, however, the measure be so incomplete as the permitted continuance of the existing reserves supposes, it would be vain to hope that these individuals would acquiesce in that part of it which presses particularly upon them. Nor can it be denied that, under such circumstances, the proposed tax would wear in some degree an appearance of injustice, nor that it would be vain to hope for any marked success for the plan of which it forms a part. Crown Lands.

It is obvious, indeed, as has been confessed by every person who has made inquiries upon the subject, that such reserves are most wasteful in their operation. The object contemplated by Parliament in establishing the system of clergy reserves, could not have been obtained in a more injurious manner. In order that there might be a wealthy church in the Canadas, free from the odium which it was supposed must attach to it if supported by any direct impost, it was endowed with land which, valueless in itself, could only become valuable by the labours of the settlers in its neighbourhood. But these reserves, had more influence in retarding the progress of settlement, than the labours of the settlers had in increasing their value. The prosperity of the colony was greatly retarded, but the value of the lands appropriated for the clergy was but little augmented. The average price per acre at which the clergy reserves in Lower Canada have been sold, is less than 5*s.*; and though there have been apparently well-founded complaints against the late commissioner for the sale of clergy reserves in that Province, on account of the wasteful nature of the sales which he made, these complaints refer but to a small portion of the property, and the average price would probably have been raised in only a very trifling degree if no such waste had occurred. In Upper Canada, the small proportion which has been sold, has, under the system of sale by auction, and of accepting payment by 10 annual instalments, produced the nominal amount of 15*s.* per acre. Yet this can by no means be taken as a fair test of the value of these reserves in general, and has only been obtained in respect of the sixth which has been sold, after their injurious effects upon the community had been experienced for nearly half a century. It would be difficult to find many instances of so small a gain purchased by so large an injury.

I have in a previous part of this Report adverted to the

Crown Lands.

dissensions produced by the nature of the purpose to which these reserves have been destined. And I may suggest, that whatever may be the determination of Government with regard to the appropriation of the funds produced by the sale of these reserves, the difficulties in the way of the adjustment of that question, cannot but be greatly diminished by the removal of those injuries which the actual reservation of land has inflicted upon the colony. When the obstructions to progress, occasioned by these vast tracts of appropriated wilderness no longer exists, it may be expected that, as one great cause of irritation is destroyed, parties will discuss with more calmness the claims of those who now demand to engross or to divide the funds which they produce.

In expressing thus decidedly the opinion which I have been compelled to adopt with reference to these reserves, I may mention that my remarks apply only to the actual reservation of land from settlement. Whatever purpose the reserves were originally, or may hereafter be, designed to fulfil, would be as certainly accomplished by setting apart a corresponding portion of the proceeds of future sales of public lands; and the sum produced by the sale of the existing reserves will of course be disposed of in the manner determined upon with respect to that which has been already received from this source.

Title to Lands.

It would be obviously necessary that any plan for the future disposal of public lands should contain a sufficient provision for giving to the purchaser a complete and satisfactory title for the land purchased. Any unnecessary delay or expense in obtaining a title, not merely operates as an useless and injurious addition to the cost of the land, but has a tendency to deter purchasers, and thus to retard settlement. The complication of every system hitherto adopted in the different colonies, has been a natural result of the want of all real responsibility in the land-granting department. But like almost all similar contrivances, this multiplication of checks has not only failed to effect its purpose, but has produced fresh evils in addition to those it was intended to prevent or remove. The evidence which has been given on this subject by Mr. Kerr, Dr. Baldwin, and others, exhibits the evils of delay and uncertainty in obtaining titles; and the present state of the Crown lands in all the North American Provinces sufficiently proves how utterly unavailing the reference to different offices has been, as a means of preventing excessive or improper grants. The system which I should recommend for the future, is one similar to that practised in the United

States; partially introduced into Upper Canada by the recent Act of the Provincial Legislature for regulating the disposal of public lands; and most successfully pursued under the authority of an Act of the Imperial Parliament in the new colony of South Australia. Forms of deeds should be prepared, requiring only to be filled up with the name of the purchaser, and the description of the lot purchased; and the signature of the chief agent for the sale of lands in the district should be required to give them validity. In the meantime, until this signature is obtained, a certificate of payment of the purchase money, in respect of a particular lot, should be given to the purchaser; to be exchanged for the deed at a certain fixed period; and in the meantime to be transferrable by assignment. In this manner every purchaser would at once possess a marketable title; and the necessary time could be allowed for any system of issuing and registering titles which it might be thought expedient to adopt. Title to Lands.

There is one essential preliminary to any plan for the disposal of the public lands, without which it is impossible that there should be certainty or regularity for the future—the survey of the whole land of the province, whether granted or ungranted. It is not easy to exaggerate the confusion and errors which prevail in all the colonies with respect to the existing surveys. With very few exceptions, no man can be said to possess a secure title to his land, or even to know whether the spot upon which he is settled, belongs to himself or to his neighbour, or the Crown. Lots which, according to the diagram in the surveyor-general's office, appear to be of regular figure and of equal dimensions, are in reality of the most varied form and unequal size. A grant from the Crown which professes to convey 200 acres, has in reality conveyed a quantity varying from 120 to 280 acres. In many cases, too, lots have been granted which have been found to have no existence, except upon the map. Even at the present moment, these errors are productive of much inconvenience, and of considerable litigation. But their present effects form no measure of the injuries which may be anticipated from them. Land is not now of sufficient value, in the greater part of every province, to induce its owners to adopt measures to ascertain or enforce their rights. In many cases, too, the occupier of a lot has no neighbour who could dispute his claims to the boundaries assigned or assumed to his property. But in proportion as the increase of population gives value to land, and fills up the intervening vacancies between settlers, it is obvious that questions of boundary and title must arise, Surveys.

Surveys. which under the existing state of the surveys can only be settled by legal proceedings, and which must form an abundant and interminable source of litigation. The circumstances that have hitherto prevented these consequences from occurring in any great degree, place it still in the power of the Government to adopt measures of prevention. A fresh and accurate survey would define the boundaries of all lots; and if this were accompanied by an enactment, securing to actual settlers, land upon which improvements had been made upon the faith of existing surveys, or which was obviously necessary to enable them to enjoy the benefit of such improvements, all substantial injustice would be avoided. This could not, it is true, be effected without considerable expense; but that would surely be a false economy which should perpetuate evils so great as those which must arise from this cause, on account of the expense to be incurred in their removal. Moreover, this reform is but part of a general measure, which will itself provide the funds for carrying it into execution.

Squatters. There is another subject upon which it is I believe absolutely necessary to legislate. Throughout all of the North American provinces a very considerable portion of the population consists of squatters; persons, that is, who have settled upon land the property of the Crown, or of private individuals, without a title. The causes of this irregularity are various. In Upper and Lower Canada it has arisen chiefly, if not entirely, from the difficulties, often amounting to impossibility, in the way of obtaining land by persons of no influence who desired it for actual settlement. The profusion of the Government in granting land has, in fact, placed serious, and, in many cases, insurmountable obstacles to its acquisition, by those who had but little property, and no influence. While the utmost facilities were afforded to those whose only object in obtaining a grant, was to profit by a future sale of the land, there has been in effect, if not in intention, an equal niggardliness with respect to those who would have improved their grant. In many cases, also, it was impossible, without the expense of a journey to the capital of the province, to ascertain whether or not the land upon which a person was desirous of locating himself, belonged to the Government; and even when this point was ascertained, there was no certainty of being able to acquire it. In Upper Canada, in addition to these difficulties, the Alien Law, which was passed shortly after the last war with the United States, has rendered it impossible for an American citizen to obtain land from the Government upon any terms. The result of these circumstances has been,

that no small portion of the actual settlers are persons who have no title to the soil which they cultivate. This is not merely injurious, by rendering their mode of husbandry slovenly and exhausting, but it has also rendered them lukewarm in their loyalty to a Government under which they have no security for the enjoyment of the fruits of their labour. It may, perhaps, be argued, that they are not entitled to this advantage, and that they ought to bear the consequences of their illegal and unauthorized occupation; but without entering into the question of the absolute right of these persons to the enjoyment of the property which they have created, it cannot, I think, be deemed that, under all the circumstances of these colonies, it is expedient to add this great practical grievance to those causes of dissatisfaction which already exist. The habits of the whole population of North America, and the laws of the United States, have given a sanction to the practice of squatting, which has been confirmed in this case by the negligence of the Government, or of the non-resident proprietor. Squatters.

In the Lower Provinces, the practice is attributable in part to similar causes, but chiefly, apparently, to the absence of all other means of obtaining a livelihood. In Nova Scotia and New Brunswick, but especially in the former, emigrants on their arrival can find no employment for wages. The profusion of the government in granting its land has checked to so great an extent the prosperity of these provinces, that the actual settlers are too few or too poor to be enabled to employ labourers; and an emigrant, therefore, must either proceed at once to the United States, or, in order to support himself, must occupy the first vacant lot, from the cultivation of which he can alone procure a livelihood. To disturb a possession occasioned by such causes would be unjust as well as inexpedient. There may be particular cases which do not merit any indulgence, but it would be impossible to separate such from the mass; and, therefore, there should be some provision by which all persons occupying land to which they have no title, should be, if not secured in the possession of the land they occupy, at least guaranteed the full benefit of their improvements. With respect to those who have settled upon government land, this may be easily effected by allowing them to become purchasers at the uniform price of public lands, as has been already done in Lower Canada, by a proclamation of your Excellency; and, if needful, even allowing a certain period within which the purchase money may be paid. With respect to those who occupy land, the

Squatters.

property of private individuals, it would be necessary to pass a law entitling them to compensation for their improvements by valuation. Such a measure would not only give a great immediate stimulus to the industry of the country, but it would have a most useful effect in confirming the loyalty of many who are at present described as looking with hope rather than reluctance to the subversion of the existing government.

It also appears expedient that public land in all the North American colonies should be open to purchase by all persons, to whatever country they may belong; requiring, if necessary, that the subject of a foreign power should at the time of purchase take the oath of allegiance. Such a measure appears especially desirable with regard to citizens of the United States. No people are so adapted to encounter the fatigues and privations of the wilderness; none form such efficient pioneers of civilization. In both the Canadas almost every settlement which has reached any degree of prosperity has been commenced by persons of this class; and it is impossible to conceive a more striking contrast than is furnished by the present state of settlements thus formed by persons who had no property when they entered the bush, as it is termed, but an axe and a camp kettle; and that of settlements formed by British emigrants possessed of considerable capital. The Americans have almost uniformly prospered; the European emigrants have always been slow in their progress, and have not unfrequently been ruined. Indeed there appears to be in this, as in almost every other pursuit, a natural division of employments; and this is practically understood in all parts of the United States. One class of persons attach themselves almost entirely to the occupation of breaking up new land. They go into the wilderness, select a favourable location, erect a small hut, and commence the task of clearing. In a few years the progress of settlement brings other settlers into their neighbourhood, and they then sell their improvements, and again move off several miles in advance of the tide of population, repeating the same process as often as they are overtaken by it. By their labours the difficulties of a first settlement are, to a great extent, obviated; those who succeed them are spared the worst and most disheartening part of the toils of a settler; and the work of settlement proceeds more rapidly and prosperously than would be the case if those who eventually occupy the land, had been also the persons by whom it had been first reclaimed. In the Canadas, on account of the

previous habits of emigrants, which have given them no experience of the peculiar difficulties of settlement in the wilderness, and even unfitted them for a successful struggle with its hardships, such a class as the American pioneers would have been eminently useful; but there, owing partly to direct legislation founded upon political grounds, and partly to the proceedings of the government by whom all the lands which such persons could occupy, have been alienated, this class has had no existence. If, however, it be intended that these colonies should be the home of any considerable portion of the people of the United Kingdom, it can hardly be doubted that encouragement should be given to persons of this class, or, at least, that all direct impediments to their exertions should be removed. If, however, from any grounds similar to those which induced the legislature of Upper Canada to pass the Alien Bill, to which I have referred, the British North American colonies should be closed against citizens of the United States, it is to be feared that, in spite of all that may be done to remove existing obstacles to their progress, or to encourage emigration, they must continue to exhibit the same mortifying inferiority to the neighbouring states which is at present everywhere apparent; while, should this restriction be removed, it may be fairly anticipated that the practical skill of the Americans in this respect, aided by British capital, and stimulated by the constant influx of emigrants desirous of purchasing the improved land, would enable the Colonies to rival, if not to surpass, the progress of the most flourishing states of the Union. Squatters.

The price which it would be expedient to affix to the public land is not easily determined. Nor shall I discuss the principles which would determine the proper price in a colony for which we might legislate without regard to the proceedings of adjoining countries. In the immediate neighbourhood of the United States, where the government has never sought any higher object in putting a price on new land, than that of preventing appropriation without cultivation, it would be idle to seek, by means of a price for new land, the more important end of securing an ample and constant supply of labour for hire. In respect to the price of public land, legislation for the North American Colonies must necessarily be governed by the course of the United States. In their immediate neighbourhood it would be impossible to adopt the leading principle on which the colony of South Australia has been founded, and which was recommended by a Select Committee of the House of Comons in 1836. One might as well attempt Price of Land.

Price of Land.

to maintain in the British Colonies a totally different currency from that which prevails in the American Union.

Satisfied, however, that the price of new land required by the American government is too low, even for the objects which it has in view, and also that a somewhat higher price would not induce British emigrants to prefer a foreign country for settlement, I would adopt the highest price which would not have that effect. That in every colony the price is too low, appears evident from the fact that it has encouraged rather than deterred the acquisition of land by persons who do not intend to settle or improve it, and that it has induced numbers to become purchasers with very inadequate means. In Upper Canada, where the price has been apparently highest, the latter result has been produced very extensively. But there, though the nominal price has averaged 10*s.* per acre, yet the sum which has actually been obtained in the great majority of cases in which persons of the labouring class have become purchasers, is in reality very little more than a fourth of this amount, because, in such cases, only the first instalment has generally been paid. In every colony, therefore, the real price can scarcely be said to have been more than from 2*s.* to 4*s.* per acre, while in the United States the uniform price is a dollar and a quarter, or 6*s.* 3*d.* per acre. I am inclined to think, that 10*s.* per acre would not exceed a safe limit. But this is, perhaps, a point which would be more properly left to the determination of that special and responsible authority to which I propose that the whole administration of the public lands in the colonies should be confided. Some further remarks upon the subject, however, may not be misplaced here.

That at such a price the sales of public land would for some time be very inconsiderable, is highly probable ; but this appears to be a recommendation instead of an objection to the measure. It is not for the interest of the colonies that any very large amount of the land yet remaining at the disposal of the Crown should be occupied for the present. That part of every colony which ought first to be settled, is in the possession of private persons. Until the tracts already appropriated are fully settled, it would be wasteful and injurious to encourage settlement upon the remaining public lands. And when these tracts are covered with inhabitants, the general value of land in the colonies will be so far advanced as to make this price really lower than that which is required at present ; and therefore to give greater encouragement to purchase than is now afforded. This view is strikingly supported

by the results of the different prices at present demanded in the different colonies. In Nova Scotia, 2*s.* per acre, payable in four annual instalments, is found to be too high a price, having reference to the circumstances of the country and to the means of the settlers; while in Upper Canada there has been no deficiency of purchasers from the Government and the Canada Company, at a price more than five times this amount. This difference is easily explained by a consideration of the condition of each colony, and the fact that there has been a large introduction of both capital and labour into the latter colony, while no capitalists have been attracted into the former; and consequently no employment has existed for the few labourers who have arrived there. In neither colony has the mere price of government land had any effect upon the ability of individuals to become purchasers. In both. this has depended upon circumstances altogether independent of that price. Price of Land.

It is obviously in the power of government to create in all the colonies such a state of things as may make the purchase of wild land at the higher price proposed, more advantageous than now at the lower. The only question, consequently, is whether, having regard to the object for which any price is required, and to the manner in which it is to be applied, 10*s.* per acre is higher than ought to be required, or than purchasers will generally be found willing to give.

In the United States, the money derived from the sale of public land, is applied in aid of the general revenue. The purchasers derive no special or peculiar advantages from its application. It is expended in the promotion of objects, in which the inhabitants of the older States, that contribute nothing to this source of revenue, are as much interested as the new States, in which it is exclusively raised. Under the plan that I am about to propose, the whole amount of the purchase money of public land in the North American colonies would be expended partly in the execution of works, from which the purchasers would derive a direct and immediate benefit, and the funds for which are raised in the United States by taxation; and partly in providing for a greatly increased emigration. These works, too, or at least the greater portion of them, would be performed before the land was sold, and the purchasers, therefore, would be in the same position as those who, in the United States, purchase land from speculators who have given an increased value to their land, by the improvements which they have effected upon it. Assuming, therefore, that the measures suggested will be carried into

Price of Land.

effect, a higher price may be properly demanded for the land in the colonies than that which is at present the upset price in the United States; and the result of this price, coupled with the other measures with which it is connected, would be, with respect to the colonies, similar to that which has been produced with respect to the United States by the general system pursued in that country, of which the present higher price forms a part. Instead of deterring, it would attract purchasers; and we might confidently rely upon seeing American citizens leaving their own country to enjoy the greater economical advantages of the British colonies, in the same manner as British emigrants are now drawn to the United States by the superior attractions which they offer.

With regard to Upper, and even to Lower Canada, there would probably be no objection urged to such a price, and no apprehensions entertained as to its effects. But with regard to the other provinces, where, just because no sufficient price has ever been required, the very low price at present demanded is considered an obstacle to settlement, it may possibly be feared that the price proposed might be found inapplicable to the circumstances in which they are placed; and this might possibly, by reason of the great quantity and cheapness of wild land in private hands, be the case if such a measure were to stand alone. The imposition of any such price—it might indeed be said of any price—presupposes the existence of such a state of things as would place it within the power of persons of the labouring class to earn and to accumulate money. In Nova Scotia, the labouring emigrant has no means of employment. He cannot become a purchaser, because he cannot earn money by his labour. It is from the land alone that he can obtain the means of subsistence; and to require any price for land, under such circumstances, is to place an impassable barrier in the way of its acquisition by persons of that class, and to drive them into the United States. But if, by measures such as have been proposed, the proprietors of the wild land are induced and enabled to improve and settle their grants; and if, at the same time, works of the nature contemplated are undertaken, labouring emigrants will be enabled to obtain employment for wages, and out of their savings to purchase land at the proposed price, either from the government or from private proprietors.

It must be remembered, also, that in every colony the operation of the proposed price will be slow and gradual; government land will in only a very few instances be purchased at first; and it may rather be feared that the tax on

wild lands will have the effect of lowering too much the general price of land, and thus of perpetuating for a longer period some of the evils at present experienced, than that the impossibility of obtaining government land on the present low terms will check its acquisition, under any circumstances which would render such acquisition desirable. In every colony the selling price of land must, for some time at least, depend far more upon private holders than upon the government; and the government, therefore, is freed from the necessity of regarding the immediate and temporary results of its determination in deciding upon the price which it would be expedient to adopt. The only end which it has at present to secure by a price is, to prevent any more of that undue appropriation which now discourages the hope that much land would soon be purchased at any price. Price of Land.

The proposed price of 10*s*. per acre, regarded in connexion with some of the objects it is intended to accomplish, is, in fact, much lower than it would be desirable to fix. Even at that price, there is great reason to fear that labouring emigrants may be induced to become purchasers before they have either the requisite capital or knowledge to qualify them for the position they will thus assume. The produce of the fund, also, will be scarcely adequate to the objects to which it ought to be applied, the construction of public works and the promotion of emigration. But it has been selected as the price which will most nearly provide for the accomplishment of these purposes, and, at the same time, the highest which probably it would be in the power of government to obtain, having reference to the price fixed upon public land in the United States. It is not impossible that the measures proposed, if fully carried into effect, might enable government to obtain even a higher price; but it would hardly be safe to venture upon the experiment. In proposing this price, however, I wish to be regarded as doing so merely as a compromise; not because I think it best in itself, but because I think it the best which can be obtained under the circumstances.

The disposal of the timber upon the public lands of the Provinces was included within the inquiries that I instituted. It is only of late years that any attempt has been made in the Canadas to derive a revenue from this property. Originally the right to cut timber upon the public lands was a monopoly in the hands of the contractors for the supply of the navy with timber; and they were in the practice of selling licences to merchants and lumbermen in the Colonies, by whom, con- Timber.

Timber.

sequently, the whole legal trade in this article was engrossed. But as the commerce of the Colonies increased, it was found impracticable to prevent unlicensed adventurers from engaging in the lumber business; and there appeared every prospect, in spite of the exertions of the law officers of the Crown in Upper Canada, that the unlicensed trade in this article would become greater than that conducted under the authority of the Government. At length, in the year 1824, it appears to have been discovered that it would be a wiser course to sanction and regulate the cutting of timber by any person, with a view to making it a fixed source of revenue, than to persist in useless but harassing attempts to check or punish practices which, from the nature of the country, it was impossible to prevent. With this view, the whole management of the timber was placed under the control of an officer, entitled the Surveyor-general of Woods and Forests, whose business it was to offer for sale, licences to cut timber upon public lands at an uniform upset price; to collect the revenue arising from this source; and to protect the Crown timber from waste or depredation. In all of the Provinces this office has in effect merged in the office of Commissioner of Crown Lands, and the timber is therefore under the same general superintendence as the public lands of the Colonies.

I was unable to obtain any accurate information as to the probable value of this property. From the evidence, however, of Mr. Kerr, and of Mr. Shirreff, it appears, that the quantity of timber upon the waste lands of the Province is practically unlimited, and that, independently of the consumption of this article in England, there exists at present a demand for pine timber in the Northern and Western States of the Union which may be expected to experience a very rapid increase, and which can only be supplied from the British North American Colonies.

From the evidence of Mr. Kerr and Mr. Davidson, and others, it appears that the revenue which, under a wise and careful system of management, might have been derived from this property, has been needlessly sacrificed by the practices adopted in the disposal of public lands. The value of the timber upon an acre of land at the price of Government licences is frequently more than ten times greater than the amount required to be paid, in order to obtain possession of the land upon which the timber is growing. Payment of the first instalment of the purchase-money is alone necessary for this purpose, and before the second instalment is due, or any measures are adopted to enforce payment, the timber may be

cut down, and the land abandoned. To what extent this has been the case it is difficult to determine; but there is no doubt that very large tracts have been purchased for the sake of the timber merely; because the whole purchase-money, if paid, has been very far less than the price of timber licences, and because the land would remain in the possession of the purchaser after the timber had been cut. Besides this cause of defalcation in the revenue that might have been derived from this source, there has been no proper inspection on the spot, so that the quantity of timber cut has been very far greater than that for which a licence has been obtained. Timber.

The plan which I have proposed of selling land at a fixed uniform price, and requiring the payment of the whole purchase money at the time of sale, will prevent, to a very considerable extent, the purchase of land for the mere sake of the timber. As the land upon which the most valuable timber grows, is generally of an inferior quality of soil, and of no value for agricultural purposes, it may be expected that but little of it will be purchased, and that the whole timber fund will be derived from the sale of licences. It will therefore be expedient to establish an efficient system of supervision in all the timber districts; and by comparing the returns made by the district inspectors, of the quantity of timber cut, with the entries at the custom house of the quantity of timber shipped, some security may be obtained against the frauds which are now practised in respect of this property.

It is suggested by Mr. Kerr, that the present price of timber licences is too low, having regard not merely to the value of timber in the English market, but also to its price in the United States. Although disposed to concur in this opinion, I do not feel myself warranted in recommending any advance in that price at present upon the only information I now possess, and especially considering the uncertainty which is felt to be attached to the continuance of the present timber duties in England. This is one of the matters that must be left to the special authority which I shall subsequently recommend, to determine, from further and more accurate inquiries.

The present average annual amount produced by the sale of timber licences in all the Colonies, appears to be about 24,000*l.*; but there seems no reason to doubt that under an improved system of inspection and management, this amount might be greatly increased.

The funds to be produced from all these sources, from the tax upon wild lands, from the sale of the public lands, and from the disposal of timber licences, should be specifically Application of Funds.

Application of Funds.

appropriated to such works as would improve the value of land and facilitate the progress of settlement. Of such works I may mention the construction of leading lines of road, the removal of obstructions in the navigation of rivers, and the formation of railroads and canals. In some of these works, the whole of the cost will be defrayed out of these funds; in others, it will only be necessary to afford a limited amount of assistance, in aid of works in which private capital may be invested, though not to a sufficient amount to complete the undertaking. Of the class in which only a partial assistance would be required, are the railroads and canals, which have been projected to connect the different Colonies with each other; or to improve existing or create new means of transport for passengers and merchandize to the Western States of the Union; and to which the resources of the Colonies are as yet unequal. Of these, I may mention the projected canal between the Bay of Fundy and the Bay Verte, referred to in the evidence of Mr. Mackay; the canal connecting the River Ottawa and Lake Huron, by means of Lake Nipissing and French River, referred to in the evidence of Mr. Shirreff; a projected railroad connecting Lake Ontario with Lake Huron; and the railroad from Halifax to Quebec. Nor can it be doubted that as population advanced and the resources of the Colonies were developed, numerous similar undertakings would arise in which a portion of these funds might be advantageously employed, and in which also, British capital might be invested with as much security, and might command as large a profit, as that which is now to so great an extent invested in similar undertakings in the United States.

It is not needful that I should attempt to describe in detail the consequences which may be anticipated from such an application of the revenues which will be produced by the measures I have suggested; they have been already described by implication, in the picture which I have drawn of the state of the North American colonies under their present deplorable deficiency in all those matters for which the proposed expenditure would provide. It may fairly be assumed, that taken in connexion with the other measures, previously and subsequently suggested, they will introduce into the colonies a state of things as gratifying to every one friendly to British institutions, and interested in the welfare of the Colonies, as the present condition of these provinces is now the reverse.

Emigration.

But any plan which may be proposed for the improvement of these extensive and important provinces, must of necessity be incomplete, unless it provides for a large and constant

immigration. It is only by means of such immigration that the execution of the great public works referred to above can be accomplished, and the vast tracts of appropriated desert filled up with settlers. It is indeed an essential condition of any scheme of emigration to which the Government of the United Kingdom is a party, that measures having a like object, if not identical in character, with those above suggested, should be adopted; and that their permanence should be secured by a legislative guarantee. But it is no less a necessary condition of any such measures, that the Government should provide for the direction of a constant stream of emigration to these colonies. Without the performance of the former condition, emigrants must still be exposed to many of the evils they have hitherto experienced; if capitalists, to the waste of their pecuniary means in an unavailing contest with the difficulties which unwise methods of granting public lands have placed in their way; if labourers, to a precarious and limited employment, cheered by no sure prospect of ultimate independence. And both will then, as now, be driven to avail themselves of the superior advantages offered by the neighbouring States of the Union. Without systematic emigration, too, there can be no security for the profitable expenditure of the sums it is proposed to raise in the colonies, and no opportunities for the proprietors of the wild land to bring their possessions under speedy cultivation. If there is no tax upon wild lands, and no improvement of the communications of the colonies, emigration would be unprofitable to the colony and injurious to the individual; and if there is no emigration, the proposed tax could hardly fail to press unfairly. Assuming, however, that the Government and the Legislature will not hesitate to apply the appropriate remedy to the evils I have described, and that the colonists will joyfully accept a measure so fraught with advantage to themselves, I proceed to the subject of emigration, a topic more immediately affecting the people of the United Kingdom than any of those to which I have hitherto referred. But before entering upon any detail of the measures which appear to me to be requisite in order that the emigration which I recommend shall be safe and advantageous to the emigrant, it appears needful that I should advert to its past and present condition.

Emigration.

Upon this subject very great misconceptions appear to prevail in England. It seems that all those who have made inquiries into the subject of emigration from the United Kingdom, have imagined that no interference was required

Emigration.

with respect to that to the North American provinces; and that although some trifling matters of detail might require correction, the general character of that emigration was such as to forbid any intermeddling. This misconception is undoubtedly attributable, in a great degree, to the circumstance, that all the evidence obtained on the subject, was collected in the country from which the emigrants departed, instead of that at which they arrived. Had the position of the inquirers been reversed, they must have arrived at very different conclusions, and have discovered that no emigration so imperatively demanded the regulating interposition of the Legislature as that for which they specially refused to provide.

The evidence which has been collected upon this subject is almost entirely confined to the case of those who arrive at the port of Quebec. The number of those who land in New Brunswick and Halifax is so small as to have attracted comparatively little attention. The want, I will not say of any adequate provision, but of any provision whatever, for the reception and employment of those latter emigrants has, indeed, been sensibly felt. But the manner of their arrival, and the arrangement for their transport, have been altogether overlooked. From the evidence of Dr. Skey and Dr. Morrin, it appears that, up to the year 1832, the condition of the emigrants, on their arrival in the port of Quebec, was miserable in the extreme; that numbers perished during the passage; that those who landed were the victims of contagious diseases, occasioned by filth and privation during their voyage; that many were landed in a state of utter destitution, without even the means of shelter; and that they introduced pestilence into the city, and formed a heavy burthen upon the charity of the inhabitants. It is stated, that on one occasion upwards of 400 patients with contagious diseases were admitted into the hospital at one time. Those, too, who escaped these evils were ignorant of the true circumstances of the country; without the means of ascertaining where, and in what manner, they could find employment, and too frequently, if employed during the summer, left without any means of subsistence during the winter. In fact the emigration of that period was fraught with evil to the emigrant and to the colony, and the ultimate advantage to either was purchased at the cost of great and needless suffering. It appears, however, from the Report of the chief agent for emigrants in the United Kingdom, an officer recently appointed in the Colonial department, that at the time when these evils were at their height, the Government Commission, formed in

Ordered by the House of Commons to be printed, 14 May 1838.

1831, for the purpose of inquiring into the subject of emigration, were led by the evidence brought before them to imagine that the vast numbers proceeding to the North American Colonies, and especially to the Province of Lower Canada, had emigrated and established themselves in the colonies without any serious or lasting inconvenience. The evidence laid before them appeared to warrant such a conclusion; and the practical inference which this Commission drew from its inquiries appears to have been, that the system throve too well spontaneously to require, or even admit of, their interference. Unfortunately, however, the conclusions of this Commission did not rest at the point of non-interference. They conceived that they should be only fulfilling the object of their appointment, by diffusing among all those classes, who might be disposed to emigrate, correct information as to the rate of wages and the prices of provisions in the colonies; and they accordingly circulated as widely as possible, lists of wages and prices, and such other statements as might place the advantages of emigration in the most striking point of view. The result of these proceedings on their part was, that the emigration to all the North American Colonies, which had been 58,067 in 1831, amounted, in 1832, to 66,339. In the latter year, however, in addition to the ordinary diseases to which emigrants were exposed, the cholera made its appearance in the two Canadas. Vast numbers of the emigrants perished from this disease, in the most miserable manner, the inhabitants of the towns, under the belief that the disease was contagious, refusing to admit any strangers into their houses; and those who were attacked by it being literally left to perish in the streets. In the year 1832 a quarantine station was established at Grosse Isle, an island about 30 miles below Quebec, which, except in the two years of cholera, 1832 and 1834, has accomplished the object of saving the city from the contagious diseases by which it was formerly visited every year. The amended Passengers Act also, and the appointment of agents at many of the ports of the United Kingdom from which the largest numbers of emigrants depart, have effected some improvements in the condition of the emigrants on board many of the vessels. It appears, however, from the evidence of Mr. Jessopp and Dr. Poole, that the provisions of that Act are evaded in very numerous instances; and that cases still occur, in which from 70 to 80 passengers on board of a single vessel are attacked by contagious fevers. It appears, too, from the evidence of Mr. Forsyth, that the want of any effectual provision for the reception of emigrants, and for

Emigration.

Emigration.

forwarding them to those places where they would find immediate and permanent employment, have been remedied in no appreciable degree by the appointment of emigrant agents in the colonies.

It is not necessary that I should attempt to prove, that it is the duty of Government to regulate the emigration that it continues to encourage, and to establish an efficient system of control over emigrant vessels; because this is admitted in principle at least, by the appointment of an agent-general for emigrants, and of subordinate agents at some of the ports of embarkation. But the measures adopted have been partial and incomplete; and though in some cases they have prevented, in many they have permitted the continuance of all the evils against which they were intended to guard. If looked at by an individual residing in England, it is probable that they may appear adequate and effectual, because in that country attention is directed exculsively to the evils they prevent. In the colonies their deficiency is apparent, since there, attention is naturally fixed upon those evils which they leave untouched. The evidence given upon this subject by gentlemen whose position necessarily makes them acquainted with the real character of emigration at the present time, and who can have no motive but the desire of remedying the evils they describe, leaves no doubt that this admitted duty of Government is still to a considerable extent unperformed, and suggests reasons for doubting whether the manner in which its performance has been attempted, is not faulty in principle as well as insufficient in detail.

There is not indeed any obvious reason why the Government should take less effectual measures to regulate emigration to the American than to the Australian Colonies. There may be a difference in the character and circumstances of emigration to the two regions, but none so great as to free the former from all interference, while the latter is in several cases, to a great extent, and in one, entirely, regulated by Government.

The great amount of voluntary emigration to the North American Colonies, which has been assigned as a reason for the non-interference of Government, even if it be admitted as an argument against the offer of a free passage to any class, lest this offer should operate practically to deter many who emigrate upon their own resources, forms at the same time one of the most powerful arguments for the adoption of an effectual system of control over this voluntary emigration. Of the tens of thousands who emigrated every year, it must

have been known that the vast majority were ignorant of the existence of any law to which they could appeal for protection against extortion or ill treatment. All of them were proceeding to a place where employment could be furnished to but a very small portion; and to these only for a limited period. The place of ultimate destination of nearly all the emigrants, was several hundred miles from the port of debarkation; and there existed no means of forwarding them to the spot where their labour would be in demand, upon the adequacy or permanency of which it would be safe for the Government to rely. Private societies, indeed, existed at Quebec and Montreal, to whom was entrusted the expenditure of some public funds for the relief of the sick and the destitute; but these funds were insufficient in amount, and the societies entrusted with their distribution were under no legal control. So incomplete and defective were the arrangements, that in the year 1834, when from the prevalence of the cholera the necessities of the emigrants were greatest, the societies in question had absolutely no public money at their disposal, on account of the expiration of the Provincial Act under which the fund had, till then, been raised. If, however, the Imperial Government refused to take upon itself the entire direction of emigration, in the fear that they might lessen its amount, they were the more bound to take such measures as were obviously within their power to protect or to assist the emigrants. Emigration.

The measures which Government have adopted are however deplorably defective. They have left untouched some of the chief evils of emigration, and have very incompletely remedied those even against which they were especially directed. Although the safeguards for the emigrant during the passage are increased, and in many places enforced, yet there is still no check of any sort whatever over a large proportion of the emigrant vessels. The provisions for the reception of the emigrants at Quebec, so far as the Government is concerned, are of the most inefficient and unsatisfactory character; and the poorer class would have to find their way as they best might to the Upper Province, or to the United States, were it not for the operation of societies, whose main object is not the advantage of the emigrants, but to free the cities of Quebec and Montreal from the intolerable nuisance of a crowd of unemployed, miserable, and too often diseased persons. The government agent at Quebec has no power; he has not even any rules for his guidance; and no monies are placed at his disposal. At Montreal there has not been

Emigration.

any agent for the two last years. The whole extent therefore of the interference of the Government, has been to establish in England agents to superintend the enforcement of the provisions of the Passengers Act in respect of the emigrants from some ports, and to maintain an agent in the Province of Lower Canada, to observe rather than to regulate, the emigration into that province.

It may be doubted too, whether the source from which alone all the funds applicable to the relief of emigrants in Lower Canada are derived, is in reality one which ought to have been selected for that purpose. To tax the whole body of emigrants for the purpose of providing a remedy for evils which no adequate means have been adopted to prevent, and thus to compel the most prudent of that class to bear the burden of imprudence or negligence in others, is surely a measure of very doubtful justice. The practice has, I am aware, been defended by reference to the example of the United States, in some of the chief cities of which a similar tax is imposed. But this is a case which bears no analogy to the present. The United States have and can have no control over the arrangements for the transport of emigrants from the United Kingdom. The tax which they have imposed is therefore the only measure within their power, in order to prevent the whole burden of maintaining diseased or infirm emigrants from being cast upon them. They also have taken no part in encouraging emigration. If emigrants from the United Kingdom imagine that there are any peculiar advantages to be derived from emigration to the States, they cannot reasonably object to the payment of the small sum levied upon them for the protection of the community of which they are about to become members. With regard to the British Government, and the British North American Colonies, the case is different. The former have stimulated emigration, on the avowed ground that it is beneficial to the United Kingdom; and, except in the case of the Legislative Assembly of Lower Canada, the latter have welcomed it, on account of the capital and labour thus introduced among them. In this case too, the Government of Great Britain possesses the means of establishing an efficient control; and it therefore not merely compels emigrants to provide almost alone against the inconveniences incident to the attainment of a great national object, but to pay for the inadequacy of the measures which Government has adopted, or the remissness of the officers it has appointed. I do not mean to assert, that the imposition of this tax has been attended by no

advantages to the emigrants; but these advantages have been confined to a few, and might have been with more certainty and with more justice secured by other means. Emigration.

There has not indeed been any greater degree of uniformity in the proceedings of Government in reference to this than to the other subjects comprised in my inquiry. In Lower Canada there has been a tax imposed upon all emigrants from the United Kingdom arriving at the port of Quebec. In Upper Canada a sum not exceeding 5,000*l.* in the whole, out of the casual and territorial revenues, has been appropriated by Government to purposes connected with immigration. The funds received in Lower Canada are placed under the control of private societies, or devoted to objects only indirectly under the superintendence of the Government. They are applied too in such a manner as to lead to the presumption, that the only object of the legislature in imposing the tax upon emigrants, was to rid the province of them as speedily and as completely as possible. In Upper Canada the funds are placed at the disposal of an officer of the Government, and are so applied as to afford to emigrants an inducement to remain in the province. There has been no subordination of offices, and even no proper connexion between the agent in Lower and the agents in Upper Canada. It has consequently been impossible that any connected and uniform measures should be adopted. The result of this want of regularity or method, in conjunction with the circumstances of the colonies produced by the manner in which the public lands have been disposed of, has been that, of the emigrants arriving at Quebec, three-fifths according to Mr. Forsyth, and about half according to Mr. Hawke, have, either immediately, or after a very short period, proceeded to the United States.

I cannot doubt but that the facts disclosed in the evidence appended to this report, and referred to above, will induce Her Majesty's Government to adopt some more effectual means than have hitherto been pursued, to regulate the voluntary emigration to these Colonies. But their efforts ought not, I conceive, to end there. Numbers who would form most valuable labourers in the colonies are prevented from emigrating, because they have not even the small sum at present requisite to defray the cost of their passage. Numbers too, it cannot be doubted, are deterred by what they have learned of the sufferings of those who have emigrated. If any proof was required of the truth of the latter opinion, it is to be found in the fact, that the emigration to the Canadas,

Emigration.

which in the year 1832 amounted to 52,000, and which had been regularly increasing up to that period, fell off to 21,000 in 1833, on account of the miseries endured by the emigrants of the former year. Nor has it ever recovered from this check. In only one subsequent year has the emigration to Quebec exceeded 30,000, or about three-fifths of its former amount. At the same time there has been no general disinclination evinced by the people of the United Kingdom to emigrate either to the United States or to other British colonies. So far as appears, a difficulty has been rather experienced in selecting out of the numerous candidates for emigration at the public expense, not such as in the opinion of the agents of Government were fit objects of the Government bounty, but such as without injustice to the rejected applicants, might be chosen as best suited to the peculiar circumstances of the colonies to which they were sent. From all I have been able to learn as to the proceedings of the South Australian Land and Emigration Commissioners, as well as of the chief agent for emigrants in England, the number of those who were willing to emigrate very far exceeded that for which the means at their disposal could enable them to provide.

In the North American colonies, however, under an improved system, such as I have above suggested, hundreds of thousands might find the means of employment and subsistence, most advantageously for the colonies and for themselves. It is assuredly not too much to say, that these provinces would support a merely agricultural population at least tenfold greater than that by which they are now inhabited; and this agricultural population would require, and would furnish employment, for a large amount of mechanics and artisans. Those whom the inevitable fluctuations of employment in a country like Great Britain, no less than those whom the improved methods of agriculture demanded by the circumstances of Ireland, would deprive of their accustomed means of subsistence, if enabled to emigrate to these provinces, not only would themselves benefit by the change, but would develop the resources and augment the wealth of the colonies to an incalculable degree. The unprecedented prosperity of the New States of the Union, which have within a few years sprung up in the wilderness, is owing entirely to the extent of the emigration which has been directed to them, no small portion of which has consisted of emigrants from the United Kingdom. The British Government has it in its power to direct to these colonies an emigration yet more extensive, and to provide for its permanent establishment there; and this

without any cost to the United Kingdom. The funds which, under the system I have recommended, would be furnished by the colonies themselves, could not be expended in any manner so advantageous to the countries from which they are derived, as in providing for this emigration; and one great advantage to be anticipated from the execution of the public works, to which a portion of these funds is destined, is that such works would remove the principal difficulties now experienced by emigrants in obtaining employment or in establishing themselves as settlers. Emigration.

I would, therefore, recommend, that a specified portion of the produce of the wild-land tax, and of the future sales of land and timber, should be applied in providing for emigration; a part in furnishing free passage to emigrants of the most desirable age, as far as may be of both sexes in equal numbers; and a part in defraying any expenses occasioned by the superintendence of the emigration of those to whom, in conformity with this rule, or from other circumstances, a free passage cannot be offered.

The whole emigration from the United Kingdom should be so far placed under the superintendence of Government, that emigrants conveyed at the public expense should necessarily proceed in vessels chartered and regulated by the Government, and that all persons willing to pay for their own passage, should be entitled to proceed in vessels so chartered and regulated, at a cost for the passage not exceeding the charge in private vessels.

Proper means of shelter and of transport should be provided at the different ports in the colonies to which emigrants proceed; and they should be forwarded to the place where they can obtain employment, under the direction of responsible agents, acting under a central authority.

Those who could not at once obtain employment as farm labourers or mechanics, should be employed upon Government works, at the usual price of labour upon such works, which, as it is generally rather lower, having regard to the nature of the employment, than can be obtained in other occupations, will have no tendency to withdraw labour from any more useful direction.

I cannot recommend that any measures should be adopted to settle these emigrants upon land of their own. The previous habits of English labourers are not such as to fit them for the severe and painful labours to which they would thus be exposed, or to give them the forethought and prudence which such a position especially requires. Habituated to provide

Emigration.

for the subsistence of the week by the labour of the week, they are too often found to shrink from a toil cheered by no prospect of an immediate return; and having exhausted all the means furnished for their temporary support, to leave the land upon which they were placed, in order to obtain subsistence as labourers for hire. The exceptions to this result are few and unimportant. They rather confirm than invalidate the rule, and have been procured at a cost utterly disproportionate to the object attained. It is rather to be feared, that in spite of any measures that can prudently be adopted, the majority of the labouring emigrants will be tempted, by the desire of becoming independent landholders, to settle themselves upon farms of their own at too early a period for their own comfort and prosperity. It cannot, however, be the duty of Government to precipitate this period, nor in any way to interfere with the natural and profitable order of things—that the possession of capital, and an acquaintance with the modes of husbandry practised in the colonies, should precede settlement.

It would be impossible at the present moment to decide upon the amount of emigration for which it would be prudent to provide. This can only be ascertained by inquiries made upon the spot, under the direction of an authority created for the purpose. It is most essential, however, that it should not be too limited. The works proposed to be carried on will afford abundant means of employment for an amount of emigration very far beyond the present apparent demand for labour in the colonies; and by facilitating settlement, and increasing the opportunities for a profitable investment of capital, will create numerous sources of employment which do not now exist. A copious stream of emigration will supply the means for its own maintenance, but any deficiency in this respect cannot fail to be injurious; and must either lead to the withdrawal of labour from agricultural pursuits, to the construction of public works, or must leave these latter without the necessary means for their completion. The details of this subject may, however, safely be trusted to the authorities by whom the general plan is to be carried out.

Loan.

The measures recommended above, although I believe quite adequate to the ultimate and complete cure of the evils I have described, must, however, be necessarily slow in their operation; while the evils against which they are directed stand in need of an early remedy. A considerable immediate outlay is required for the execution of the greater and lesser works of communication through all parts of the colonies, in

an effectual and permanent manner, after which they may be kept in repair at a comparatively trifling expense. A small portion of the funds raised would suffice to maintain roads when once made; but the whole fund raised in the colony for several years would be required for the original construction of roads, and the produce of the future sales of wild lands and timber which would be applicable to the same purpose, will for some time be probably very trifling. As however, until these roads are made, it will be well nigh impossible that the country should be settled, the proprietors of the wild land would be compelled to pay the tax for many years before they could reap any great advantage from its application. The emigration, also, which I have recommended, ought to be comparatively greater in the first instance than it would require to be at any future period; and would constitute, therefore, an additional demand upon this inadequate fund. But the tax, and the produce of land and timber sales, though insufficient as capital, would furnish an available security as interest; and if the permanence of the system were guaranteed by an Imperial enactment, there would, I believe be no difficulty in raising, in the English money-market, a loan to any required amount, to be employed for the purposes to which it is intended that these funds should be devoted. The yearly produce of the tax would be, for all the colonies, speaking in round numbers, and allowing for all possible costs of collection, about 150,000*l.*; and though it may be expected that a very considerable portion of the tax will be paid in land, yet, as such land would be taken at less than half of the proposed future price of wild land, this would greatly increase the ultimate value of the security. The public lands, too, in the different colonies, making a similar allowance for the cost of management, would produce eventually upwards of 7,500,000*l.* And, without including the produce of timber licences, which would, nevertheless, amount to a considerable sum, the two together would form a very ample security for any advance which might be required. I should, therefore, further propose, that loans should be raised upon the security of these two funds, and be employed partly in all such public works as may be required, and partly in promoting the emigration of labourers. It will be seen at once that the proposed security would be the more certain exactly in proportion to the funds raised upon it, and devoted to purposes directly tending to augment the demand for the land and timber, by the sale of which the loans would ultimately be paid off, and interest provided in the meanwhile. The amount of the

Loan.

Loan. money which should be raised in this manner cannot be determined beforehand. It must depend upon circumstances, and must be left to the judgment of those to whom the execution of the plan is to be entrusted. By anticipating, in this manner, the revenue to be created by the system, a stimulus would be at once given to the prosperity of the colonies, of which it is impossible to exaggerate the beneficial results.

Commission. In order that the plan thus suggested may be carried out with uniformity and effect, it will be necessary that some special authority should be created, charged with the execution of the whole measure, and rendered thoroughly responsible to Parliament. It is obvious, indeed, that no sufficient machinery for this purpose exists at present, either in the Colonies or in the United Kingdom. To fulfil adequately the duties thus imposed would occupy the whole time, and demand the undivided attention, of those to whom the task is confided. The general principles of the measure must be embodied in an Act of Parliament; but there will necessarily be many details for which no enactment could provide by anticipation, and which, in fact, can only be appropriately arranged as the practical working of the measure shows their necessity. I should suggest, therefore, that a central commission should be appointed in the United Kingdom, with subordinate general and assistant commissioners in the Colonies. To these should be entrusted the whole execution of the plan; and the central commission in England should have power to frame such rules, orders, and regulations, having the force of law, as would be necessary to give effect to the principles laid down in the Act of Parliament. The duty of the English Commission would be to regulate the disposal of the public lands and timber, to regulate the imposition and application of the proposed tax, to provide for the selection and transport of emigrants, and to raise by way of loan the monies required for all these purposes. The Colonial Commission would see that the regulations of the English Board were carried into effect; would superintend the execution of all public works; would receive and forward emigrants; would provide employment for such as were not employed by the inhabitants of the colonies, and would exercise a supervision and guardianship over them for a specified period. It would be necessary that in each colony there should be a commissioner subordinate to the general Board; and that agents should be appointed, for districts of convenient dimensions, charged with the actual sale of land, with the collection of the tax, with the perfecting and registry of titles, and with all matters con-

nected with the business of the general Board, which related to the superintendance of the public works. Commission.

As a further guarantee for the responsibility of the proposed commissions, frequent reports of all the correspondence between the English and Colonial Boards, and frequent reports of their proceedings, should be laid before both Houses of Parliament, and before the Legislature of the Colonies. Without provisions for entire publicity in the proceedings of these commissioners, I should despair of any very beneficial results from their appointment. The evils which I have had to describe could not have so long existed without any adequate attempt to remedy them, if the administration under which they have taken place had not been conducted in secrecy.

Without such a special authority, it would be idle to expect that any measure, however admirable in principle or perfect in detail, can be satisfactory in practice. The experience of all the Colonies, up to the present moment, has sufficiently shown, that no care in framing general regulations can be effectual without some more constant and peculiar control than it has hitherto been practicable to exercise. These rules have been uniformly evaded or neglected; and as it has frequently happened that those only knew their real character, who were charged with their execution, it was well nigh impossible that the fact of their violation should be made known to the Imperial functionaries by whom they were framed. Often, too, it has been the case, that, when their existence and nature were public, those who were made acquainted with their violation profited by the transaction in which they were violated; and if others also knew of the occurrence, they had no immediate interest in its exposure, or could not obtain attention from the distant authority to whom reference must be made, occupied as it was with far weightier matters than what it might deem a solitary infraction of rules supposed to be generally obeyed. It is in this way only that we can account for the fact, that the systematic neglect of the regulations, successively framed for the disposal of the public lands by various Secretaries of State, should have remained unknown; and that it should have been believed, even up to the time when the instructions of Lord Glenelg were issued in 1837, that the previous instructions of Lord Goderich were observed, when in fact there was not a single colony in which they obtained any degree of observance. That the Secretary of State for the Colonies should still have the supreme control of this, as of other matters of administration connected with the colonies, appears undoubtedly

Commission.

advisable ; and this will be secured by a provision, that all regulations framed by the Board of Commissioners should receive his sanction ; but the enforcement of these regulations, if it is intended that they should be enforced, ought to be entrusted to some special and peculiar authority, and subjected in every possible way to the public inspection. I suppose that the costs of the proposed commission would be defrayed by the revenue which this system of colonization would call into existence.

In concluding this Report, I have only to repeat, that the Imperial Government has but the alternative of adopting the measures which I have recommended, or others similar in their character and tendency, or of abandoning absolutely all control over the public lands, and discouraging, instead of encouraging, emigration to the colonies. In the event of the former course being pursued, we may, I think, confidently rely upon seeing these colonies enter upon an unparalleled career of prosperity, and upon cementing indissolubly the ties which now connect them with the United Kingdom. In the latter, there appears no other prospect than that of continued stagnation, languor, and consequent discontent.

I have the honour to be,
My Lord,
Your Excellency's most obedient, humble Servant,
Charles Buller,
Commissioner of Crown Lands and Emigration.

Quebec,
2 November 1838.

APPENDIX C.

ORDERED TO BE PRINTED MARCH 27, 1839.

SCHEDULE.

1.—REPORTS of Commissioners of Inquiry into the Municipal Institutions of Lower Canada.

The COMMISSION.

COPY of LETTER of INSTRUCTIONS from Chief Commissioner.

PRELIMINARY REPORT of Assistant Commissioners.

GENERAL REPORT of Assistant Commissioners.

*APPENDIX.

*2.—REPORT from the Bishop of Montreal on the state of the Church within his Diocese.

[The sections marked with an asterisk have not been reprinted.]

1 REPORTS OF COMMISSIONERS OF INQUIRY INTO THE MUNICIPAL INSTITUTIONS OF LOWER CANADA.

THE COMMISSION.

Province of Lower Canada. } DURHAM.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith:—

To *Charles Buller*, greeting.

WHEREAS it is highly expedient and desirable that the counties, cities, towns, parishes and townships in Our province of Lower Canada should respectively enjoy as extensive a control as may be consistent with their own improvement, and with the general welfare of Our said province, over all matters and things of a local nature, to the end that intercourse may be facilitated, industry promoted, crime repressed, education appreciated, and true liberty understood and advanced:

Know ye, therefore, that We, reposing great trust in your

zeal, ability and discretion, have nominated, constituted and appointed, and by these presents do nominate, constitute and appoint you, the said Charles Buller, to proceed with the utmost despatch to inquire into the safest and most efficient means of endowing the said counties, cities, towns, parishes and townships with such powers and privileges as to you may seem meet for the effecting of the important ends aforesaid; and Our further will and pleasure is, that you, after due examination of the premises, do and shall from time to time report to Us, under your hand and seal, what you shall find touching or concerning the premises upon such inquiry as aforesaid; and also that you shall, from time to time, suggest such alterations or modifications of the laws and regulations at present in force as may appear likely to promote the objects aforesaid. We do by these presents give and grant to you full power and authority to call before you such and so many of the grand voyers, surveyors of highways and justices of the peace in Our said province of Lower Canada, and such other officers of the Crown and other persons as you shall judge necessary, and by whom you may be the better informed of the truth in the premises, and to inquire of the premises and every part thereof by all other lawful ways and means whatsoever; and We do also give and grant to you full power and authority to cause all and singular the officers aforesaid in Our said province of Lower Canada, or any other person or persons having in their custody any records, orders, regulations, books, papers or other writings relating to the premises, or in any way connected therewith, to bring and produce the same before you. And for your assistance in the due execution of this Our Commission, We do hereby authorize you to nominate and appoint such person or persons as you shall think fit, to be Assistant Commissioner or Assistant Commissioners, for the purposes aforesaid, or any of them, and to delegate to him or them such and so many of the powers hereinbefore vested in you as may seem expedient; and Our will is, and We do hereby direct and ordain that the person or persons so nominated by you shall possess and exercise any powers and authorities so as aforesaid delegated to him or them, in as full and ample a manner as the same are possessed and may be exercised by you under the authority of these presents; and We do hereby further authorize and empower you, at your discretion, to appoint such person as Secretary to this our Commission as you shall see proper.*

* No Secretary was appointed to the Commission.

In testimony whereof We have caused these Our letters to be made patent and the great seal of Our said province of Lower Canada to be affixed thereto.

Witness Our right trusty and right well-beloved John George Earl of Durham, Viscount Lambton, &c. &c., Knight Grand Cross of the Most Honourable Military Order of the Bath, one of Our Most Honourable Privy Council, and Governor-general, Vice-admiral and Captain-general of all Our provinces within and adjacent to the continent of North America, &c. &c. &c.

At Our Castle of St. Lewis, in Our city of Quebec, in Our said province of Lower Canada, the 23d day of August in the year of Our Lord 1838, and in the second year of Our reign.

(signed) *D. Daly*, Secretary.

Castle of St. Lewis, Quebec, 25 August 1838.

APPOINTMENTS.

General Commission of Inquiry into Municipal Institutions.

Chief Commissioner :—
The Honourable Charles Buller.

Assistant Commissioners :—
William Kennedy and Adam Thom, Esquires.

MUNICIPAL COMMISSION.

(Copy of a LETTER of INSTRUCTIONS addressed by the Honourable *Charles Buller*, M.P., Chief Commissioner of Municipal Inquiry to the Assistant Commissioners.)

Castle of St. Lewis, Quebec, 25 August 1838.

Gentlemen,

Before entering on the duties which you have undertaken in consenting to act as Assistant Commissioners in the inquiry respecting the municipal institutions of this province, it is necessary that I should point out the objects of that inquiry more specifically than they are to be found in the commission itself.

You cannot, however, have failed to observe from the whole tenor of that commission, that the word 'Municipal' has been used in its largest sense; that it has not been conjoined with any other that would limit your inquiries to incorporated towns; and that within the scope of your investigation will be included every matter that may be properly submitted to local or municipal management. The chief of these have been pointed out in the commission, which mentions increased facilities of internal communication, the encouragement of industry, and the repression of crime, as primary objects of attention. It is indeed impossible to enumerate exactly the various branches of inquiry, or define them very precisely. The class includes all those concerns of the people which it is advisable to exclude from the business of the central executive government, and leave to be managed by the separate local divisions which have an interest in them. The limits of this class have been more or less wide in different countries. There would be no objection to your extending your inquiries to all the matters comprehended in the widest classification, but custom and general opinion have sufficiently marked out the most important of those which come within the province of municipal administration.

Having determined the objects of municipal government, you will proceed to ascertain how they have been provided for in this country. You will inquire and report about the provision which has been made for the formation and maintenance of those internal communications, which, as they concern only local divisions, can never be objects of interest to a central government. The system by which the roads and bridges of the province have been managed will be one of the first and most important subjects of investigation. The paving, draining and lighting of towns will present kindred subjects of inquiry. You will also direct your attention to the means provided for the erection and maintenance of public buildings, both in town and country. The management of the entire police of the province will come under your consideration. You will inform me of the system which has been established for the purpose of protecting the persons and property of the inhabitants, both of the towns and rural districts, and of the degree of efficiency with which it has been administered. It will not be your business to inquire into the various particular charities, hospitals and medical institutions which have been founded throughout the province by the benevolence of individuals, and governed according to the regulations prescribed by their founders; but the

general provision for the poor is an important part of local arrangements. You will therefore investigate the system which has been established for the general relief of destitution and the suppression of mendicancy and vagrancy. There are other matters which no wise government would leave entirely to mere local arrangement, but in the management of which it has been found that the central government may advantageously avail itself of a well-organized municipal machinery: such are the inferior judicatures, the subordinate magistracy, and the institutions of education. I do not desire from you a complete view of the judicial establishments of the province, because the administration of justice is a subject the importance of which will demand and receive from his Excellency a separate investigation; but you will inquire into the establishments which exist unconnected with the higher courts of civil and criminal jurisdiction, for the settlement of petty disputes, the repression of minor offences, and the enforcement of police regulations. You will especially direct your attention to all those judicial institutions which are in any degree of a popular nature, and in which the inhabitants of the various provincial subdivisions have a voice in the selection of the local judges.

The choice of a local magistracy has in some countries been wholly, or partly, left to the people of the locality. You will inform me how far the inhabitants of this province have been intrusted with any share of this power, either by direct selection or recommendation of their magistrates, or by the attribution of magisterial functions to the popularly-elected officers of a town or district—applying the latter word according to general usage.

In the same way, you will inquire how far the inhabitants of the local divisions of the province have had a voice in the management of local schools or the appointment of schoolmasters, and how far the support of the institutions of education has been made to depend upon local imposts.

After these investigations, our information on this head as to the present establishments of the province will require to be completed by your turning your researches from the mode in which municipal purposes have been provided for, to the municipal machinery which may happen to exist. The example of various nations supplies instances of the existence of a very complete machinery for local government available for all municipal purposes, but actually applied to none, or to very few, furnished with very inadequate powers, or intrusted with very incomplete duties. Thus, in the

parishes of England a machinery for local self-government exists, which might be rendered applicable to every description of municipal business, but which is, in fact, restricted to the management of a very small portion. In Upper Canada there appears to exist a systematic, comprehensive and popular organization of the townships. The people of these districts are intrusted with the freest election of municipal officers, but the officers thus chosen seem to be intrusted with hardly any duties, and certainly are invested with hardly any of the powers, which are necessary for a really efficient municipal government. The inhabitants of these townships appear to have a very popular choice of nearly useless functionaries; and a very perfect municipal machinery exists without being rendered available for the most important municipal purposes. You will inquire, therefore, whether anything of a similar nature exists in this province; whether, for any purposes, the inhabitants of small local districts are in the habit of managing any portion of their own affairs, or meeting to discuss their local concerns, or selecting their local officers. You will describe the municipal machinery which may happen to exist for any purpose, and any existing institutions for any species of local self-government, which may be applied to the higher kinds of municipal duties.

To leave to local management whatever can be safely intrusted to it, and in such local management to give a voice to as large a number of the people as can use the suffrage for the common advantage, will be your great object; in the prosecution of which, you will conduct your inquiries in the way which you may deem best calculated to enable you to draw just conclusions and to furnish an early report.

I have, &c.

William Kennedy,
Adam Thom, } Esquires.

(signed) *Charles Buller.*

PRELIMINARY REPORT OF THE ASSISTANT COMMISSIONERS OF MUNICIPAL INQUIRY.

To the Honourable *Charles Buller*, Chief Commissioner of Inquiry into Municipal Institutions.

Municipal Commission Office, Quebec,

Sir, 27 October 1838.

In conformity with your letter of instructions, as chief of the commission appointed to inquire into the municipal

institutions of the province of Lower Canada, we proceeded to lay down a plan for conducting the inquiry on a comprehensive basis, and, in the way that promised to enable us most readily to meet the exigencies of a community lying under a suspension of constitutional rights. With a view to the economy of time, as well as to the obtaining of accurate information, we came to the conclusion, that we should discharge the duties of the commission most satisfactorily by directing our investigation, in the first instance, to the cities of Quebec and Montreal. Those cities had been incorporated for a term of three years by Acts of the provincial legislature. If the experiment of incorporation had been successful, their inhabitants would, of course, feel anxious for the renewal of the statutes which expired in 1836; if it had been unsuccessful, it was necessary to ascertain the cause of failure, in order to guard against its recurrence in future legislation. It was fair to assume, that the lapse of their municipal government would be productive of injury and inconvenience in growing commercial towns like Quebec and Montreal; we were, therefore, impressed with the conviction that we should best consult the public interest and wishes, by making the municipal regulations of these towns the subject of a separate report, to be submitted as early as possible to his Excellency, Her Majesty's High Commissioner, as material for legislative enactment. Thus we had reason to hope that, in the course of a few months, the benefit of improved and extended municipal institutions might have been conferred upon the principal seats of provincial intelligence and wealth, in which the disorder and discomfort occasioned by the absence of these institutions is strikingly apparent.

Another consideration weighed with us in giving precedence to Quebec and Montreal, the desire of obtaining the advantage of the auxiliary information to be derived from this branch of the inquiry before directing our investigation to the rural districts, where habits of self-government are almost unknown, and education is so scantily diffused, as to render it difficult to procure a sufficient number of persons competent to administer the functions that would be created by a general scheme of popular local control.

In accordance with this plan, we called for the evidence of persons presumed to be acquainted with the subject, as to the working of the Act which provided for the incorporation of Quebec. The inquiry was so far matured, that we should have been prepared, after devoting a little time to hearing evidence in Montreal, to submit to his Excellency a complete

scheme of incorporation for both cities. After the performance of this, the more urgent part of our duty, it was our intention to have made a circuit of the rural districts, for the purpose of carefully examining the practical operation of such institutions as may have been devised for the regulation of local affairs, and of determining, from personal observation, to what extent, and under what restrictions, the agricultural population might safely become the depositories of municipal authority. The vague and conflicting character of the evidence submitted to us, even on matters of ordinary social concern, satisfied us of the necessity of closely examining, on the spot, the wants of the rural districts, their modes of local government, and their capacities for municipal organization. We were farther confirmed in this opinion, by the discouraging manner in which intelligent and experienced persons, both of British and Canadian blood, spoke of the *habitans* in relation to the business of local management. They were almost unanimous in affirming, that the ignorance which prevails among this class, together with their deep-rooted dislike to every kind of tax and assessment, must render any attempt to improve the country, by means of a comprehensive municipal system, impracticable.

From the line of proceeding which, under the circumstances referred to, we deemed it expedient to adopt, events untoward for the settlement of these colonies constrained us to depart. We were, therefore, obliged to alter the plan of investigation, so that we might be enabled to furnish a general report on the subject of our inquiry, which, while it might be insufficient to show precisely the machinery which ought to be constructed for the administration of local affairs in the province, might at least serve to demonstrate that some advances towards a less defective system are imperatively demanded. Instead of visiting Montreal and the townships and seigniories, as we proposed, we were forced to content ourselves with examining some of the executive officers who act in these localities, aided by whose testimony, with documents from various sources, we have drawn up a statement of the existing municipal establishments of Lower Canada, and the machinery that might be applied to the working of an improved and comprehensive system of local administration. The nature and efficacy of superior municipal institutions seem to be very imperfectly understood in this province ; and the evidence we have collected from parties examined is exceedingly meagre and indefinite. It is indeed comparatively valueless as a help to establishing a better order of things. One important

inference, however, we could not fail to draw from it, namely, that there is no such thing as systematized local self-government in Lower Canada, and that although long under the rule of England, the province has participated far too sparingly in the benefits of sound British institutions.

We do not propose to include minute details of evidence in the report which we are preparing to lay before you, but to embody under their proper head such hints for amendment as may seem of sufficient note to be adopted or recorded.

We may be permitted to remark, that perhaps in no particular is the unhappy condition of this colony more conspicuous than in the apathy, or despondency, or party jealousy, with which persons, neither deficient in education nor wanting in the spirit of enterprise, are disposed to regard the constitution of new popular authorities for the management of matters of common interest. The proper fruits of representative government are not to be found in Lower Canada. We look in vain for the young, vigorous and generous institutions which ought to have grown up under its shade. The Constitutional Act conferred a representative government on the province. Yet, hitherto, the higher municipal functions have been discharged, partly by the provincial legislature, and partly by officers appointed by the central executive. The mass of the people, whose incapacity is censured or deplored, have been allowed the exercise of the greater privilege of electing provincial representatives, while, with singular inconsistency, they have been denied the minor right (the exercise of which would have been a wholesome preparatory for the discharge of the superior trust) of choosing municipal authorities, and thereby gradually acquiring a disciplined knowledge of their social duties in the school of practical citizenship. There are persons, too, who now plead for the restoration of the greater right, and still would hesitate to grant the lesser, contending that, until education is generally diffused, a system of popular local government would do more harm than good, and that, consequently, until a new and instructed generation shall arise, the Canadian farmers ought to remain without a voice in the management of the affairs with which they are most familiar, and for the prudent direction of which they have a paramount interest in providing.

We have, &c.

(signed) *William Kennedy,*
Adam Thom,

Assistant Commissioners of Municipal Inquiry.

GENERAL REPORT OF THE ASSISTANT COMMISSIONERS OF MUNICIPAL INQUIRY.

SOCIAL ASPECT OF THE PROVINCE OF LOWER CANADA.

The institutions by which the affairs of a country are to be regulated ought to be framed in accordance with the spirit of the people, their capacities for government, and the circumstances of their physical condition.

To bestow upon a people modes of government greatly in advance of the general state of society is hardly less unwise than to cause institutions to linger in the rear of the public mind. The imprudence of a sudden transition from political inexperience and dependence to the loosest habits of democracy is visible in the republics of South America; it may be questioned whether most of the evils that afflict Lower Canada have not originated in an error of a like description.

What is the present condition of the province, and how far are its inhabitants prepared, by previous discipline, to profit by a more liberal and comprehensive system of internal administration?

The earlier French settlements in Canada were made ostensibly with the view of converting its aboriginal inhabitants to the Roman Catholic faith. It happened, however, that of the Indians, a greater number were slain in provincial feuds than were christianized by missionary zeal. A military policy eventually prevailed in the government of the colony; and to sustain this policy, the Court of France created a military *noblesse*, poor, proud, restless, and contemptuous of commerce. There was no real order of proprietorial nobility in the country. In 1763, France ceded Canada to England. In the same year, a Governor and Council were appointed, and a proclamation was issued, which substituted for the 'Custom of Paris,' heretofore the law of Canada, the civil and criminal law of England. It was ordered, that in legal proceedings the English language should alone be used; the Governor was empowered to convene an Assembly elected by the 'freeholders and planters,' and representatives were chosen accordingly for all the parishes except Quebec. Owing to difficulties arising out of the form of the oath prescribed to the representatives, the Assembly never sat. Thus, in the very first year of possession, did England hasten to ingraft her representative system on the sterile institutions of a colony,

whose only progressive movement had been from monastic rule to military despotism. At a subsequent period, Governor Carleton and the chief law officers of the colony united in the opinion that the Canadians were not ripe for so large a share of legislative power as had at the outset been volunteered for their acceptance.

By an Act passed in 1774, it was provided, that in the administration of the colony, the Governor should be assisted by a Legislative Council, to consist of not less than 17 and not more than 23 persons (resident in the province), to be appointed by the Crown. The Act empowered the Council to impose such taxes (and such only) as the inhabitants of any town or district within the province might be 'authorized by the said Council to assess, levy, and apply within the said town or district for the purpose of making roads, erecting or repairing public buildings, or for any other purpose respecting the local convenience and economy of such town or district.' This Act re-established the French civil law in Canada.

In the year 1791, the Imperial Parliament divided the province into Upper and Lower Canada, and gave to each a constitution modelled after the form of the British; thus, within the narrow limit of 28 years, we find Lower Canada placed under four different modes of government; viz., French military authorities; English Governor and Council, with English law; English Governor and Legislative Council, with French civil law; and a constitution framed in imitation of the British, which constitution, after a troubled existence of less than half a century, has been suspended by the same imperial authority that called it into being.

Lower Canada embraces a vast extent of territory in proportion to its population, its superficies extending over almost 250,000 geographical square miles,*—about half the aggregate superficies of the British North American provinces. At the cession of the colony in 1763, its population was estimated at 70,000. The return of the census of 1831 was,

For the district of Montreal	290,000
Ditto ditto Quebec	151,980
Ditto ditto Three Rivers	56,570
Ditto ditto Gaspé	13,312
Estimated increase from 1831 to 1836 . . .	88,000
Total . . .	599,862

Of which it is computed that seven-eighths are Roman Catholics. The number of persons of this aggregate population, who are

* Bouchette.

of British origin, has been generally estimated at 200,000, of whom the great majority reside in the cities and parishes of Quebec and Montreal and the townships. The inhabitants of French origin are chiefly distributed along the banks of the St. Lawrence, as far up as Montreal. The land adjacent to this magnificent river exhibits the appearance of a continuous line of villages, a military mode of settlement, which presents obvious facilities for municipal organization.

The bulk of the population of the townships is composed of old American loyalists and more recent settlers from the United States; the remainder are emigrants from Britain. The townships in which settlements have been made are unequally peopled, some containing a sufficient number of inhabitants to form substantial communities, others varying in amount from, it may be, five to a hundred families and upwards.

The *habitans*, or agricultural population of French origin, hold their lands by feudal tenure, which prevails in the 'seigniorial' districts. Though under the sway of England for 75 years, they are but little changed in usages, and not at all in language. A very small proportion of them are acquainted with the first rudiments of education; they use comparatively few imported articles, and their system of agriculture is generally rude and antiquated. Owing to the neglect of manure and a proper rotation of crops, the land in many places has become exhausted, and its cultivators, year after year, sink deeper in poverty. Scanty harvests during the last six or eight years, caused mainly by imperfect modes of culture or injudicious cropping, have reduced considerable numbers of the *habitans* in the district of Quebec to a state of extreme destitution. In the district of Montreal, the farming is better, and the people more prosperous. The *habitant* is active, hardy and intelligent, but excitable, credulous; and, being a stranger to every thing beyond his own contracted sphere, he is peculiarly liable to be made the dupe of political speculators. His ignorance of the English language prevents him from acquiring any knowledge of the sentiments and views of the British Government and people, except what he may derive from educated persons of his own race, interested, it may be, in deceiving him. Never having *directly* experienced the benefits of British rule in local affairs, and almost as much insulated from British social influences as if the colony had never changed masters, it is idle to expect that he should entertain any active feeling of attachment to the Crown.

For opening new settlements the *habitant* has many useful qualifications, being usually competent to provide, by his personal skill, all the essentials requisite for his situation, such as house, clothing, and the ordinary farming implements. But having cleared his land, erected a dwelling for himself and a church for the *curé*, he remains stationary, contented with his lot, and living and dying as his ancestors lived and died before him. At the present day, for instance, a traveller may pass through districts where there is an abundance of excellent milk, and be unable to procure either butter or cheese with the sour and black-looking country bread which is served up at his meals; and it is by no means an uncommon circumstance for a *habitant* to sell his manure to a neighbouring farmer, or throw it into the adjoining river, while every season his crops are deteriorating, in consequence of the degeneracy of the seed and the exhaustion of the soil.

By the *habitant* a small gain, or saving of actual coin, is deemed much more important than a large expenditure of time; and he will not easily be induced to venture on an immediate pecuniary outlay to secure a remote advantage, unless indeed the money is to be devoted to litigation, in which he loves to indulge.

There is no class resembling English 'country gentlemen' among the Canadians; nor do the doctors, notaries and lawyers, who overabound in the colony, form an efficient substitute for such a class. Needy and discontented, they are more disposed to attempt an improvement in their own condition of political agitation, than to labour for the advancement of their uninstructed neighbours. The only body of men to whom the *habitans* can look for aid and direction are the parochial clergy, who, in the districts where their authority is unimpaired, act as a vigilant moral police, the efficiency of which is manifested in established habits of sobriety and order. Persons acquainted with the province are well aware that, in the disaffected districts, the influence of the Canadian clergy is much diminished.

It appears, then, that the mode of village settlement adopted by the Franco-Canadians is favourable to the establishment of municipal institutions, and that the obstacles to be encountered are the absence of education, popular inexperience, blind repugnance to taxation, and the absence of a wealthy and instructed class, interested in the prosperity of the many, and desirous of engaging gratuitously in the administration of local affairs.

The townships afford better materials for municipal govern-

ment than the seigniorial districts ; but, even in these localities, the state of education is very backward. A gentleman well acquainted with the townships writes thus from Frelighsburg, in the county of Missisquoi, on the borders of the United States. ' The people are not anxious for municipal institutions, and if they receive them, they are prepared for a very limited power. I must warn you that the power of taxation, for any purpose whatever, would produce the greatest dissatisfaction. The Commissioners would therefore do well to confine the local officers to performing administrative functions simply ; and if they do so, it is evident that their powers cannot be very extensive. But there is one set of powers which might be exercised by the officers to the great benefit of the people, and that is the control of roads. If the Commissioners see fit to recommend them to receive and exercise the same powers as the Grand Voyer now does, I am convinced that nothing would be looked upon as a greater boon. The expense, the trouble and vexation of procuring the establishment of a new road, or of altering the course of an old one, are so great that individuals undergo them only when necessity absolutely compels them. In a country such as this, the greatest facility ought to be given to the laying out of roads. It is by them that the country becomes settled and improved : without them it is nothing. Still I should not think it advisable to change the system. Here the method of making and repairing roads is infinitely preferable to any other—to that especially of the United States. The Commissioners might also, with great advantage, intrust to local officers the granting of warrants against debtors leaving the country, and for a sum much less than the one now fixed : they might reduce it to, say, 5*l*. currency. The substance of the above suggestions is, shortly, 1st. Freeholders to recommend officers (I have said nothing about the term of service ; but I think part of them should go out of office every year : if three be appointed, one to go out ; if five, two). 2d. Powers limited to those now exercised by the Grand Voyer, and to granting warrants against absconding debtors. The warrant and whole proceedings to be brought before the Commissioners' Court for small causes, if the sum due be 6*l*. 5*s*. ; and if greater, to be brought before the King's Bench.'

It is to be observed that the writer of the preceding remarks, while he alleges that the people are not anxious for municipal institutions, bears testimony to the existing necessity for them with regard to the management of roads,—one of the most important matters that can fall within their range.

Such, with the exception of the cities, is the general aspect of the province. But, unhappily, it must be added, that the distrust and animosity engendered by political dissension between the settlers of different races have materially increased the difficulty of establishing a sound and comprehensive system of local administration.

GENERAL CHARACTER OF PROVINCIAL LEGISLATION.

The mere concession of a form of general government, in outline resembling its own, may amount to a very imperfect fulfilment of the duties owing by the imperial state to a conquered colony. It is possible that the original may be excellent and the outline correct, and yet the constitution fail to benefit the country to which it has been transplanted. When, in 1791, Mr. Pitt introduced to the House of Commons the Bill for granting a representative system of government to Lower Canada, Mr. Fox remarked, that 'the only means of retaining distant colonies with advantage, was to enable them to govern themselves;'—an opinion undoubtedly just, if the speaker's ideas were not limited to the gift of some peculiar constitutional forms. The value of British constitutional forms to a people of foreign origin, language and manners, has been tested in Lower Canada, and may be ascertained by an examination of the provincial statute book, and an estimate of the benefits which have accrued to the colony from domestic legislation.

The bulk of the statutes of Lower Canada bear upon matters of a strictly municipal character, and the labour of the present investigation has been materially increased by the necessity of sifting a mass of petty enactments, framed to endure for periods so short as rather to keep society in an anxious and unsettled state, than to afford it the blessings of security and repose.

The Governor and Council who exercised their authority under the British statute, 14 Geo. 3, c. 83, commonly called 'The Quebec Act,' were, as has been stated, so far restricted as to be incompetent to impose any tax or duty, excepting only local rates for local objects. This power of taxing—limited and exceptional as it was—was amply sufficient to provide for the establishment of efficient municipal institutions; but, at so early a stage in the career of a thinly-peopled and newly-conquered colony, these institutions would most

probably have been deemed premature, perhaps even dangerous. Besides, to secure their effective operation would have been a heavy burthen upon the indolence of colonial administration. A comparatively small portion of the legislation of the Governor and Council was, at all events, directed to objects of a municipal nature. Their legislation, if not remarkable for pains-taking, had the merit of being at once general and moderate ; neither usurping the functions of a parish meeting on the one hand, nor encroaching on the prerogatives of the Imperial Parliament on the other.

Very different has been the course pursued by the legislature created by 31 Geo. 3, c. 31. The constitutional legislature of Lower Canada has too often betrayed its ignorance of its proper functions by dabbling in affairs unworthy of legislative cognizance, or grasping at matters beyond its legislative range ; equally anxious to extend the limits of its authority, and reluctant to delegate to other bodies a share of that authority. So much addicted has it been to this twofold deviation from its legitimate province, that, during a term of 45 years, it has effected little or nothing towards fulfilling its highest and most important duty—the purging of the civil code of universally acknowledged evils. Almost every essential improvement introduced into the laws of the colony has been the work of the British Parliament in the Quebec Act, of the Governor and Legislative Council in their Ordinances, or of the Imperial Parliament in the Tenures Act. Such attempts at reform as have been made by the constitutional legislature have referred almost exclusively, not to the law itself, but to the administration of the law. Most of these attempts—developed in temporary statutes—sometimes renewed, sometimes allowed to expire, have caused uncertainty and confusion ; while the judicature law (34 Geo. 3, c. 6), by multiplying Courts of King's Bench, and infusing them alternately into the Court of Appeal, has tended to produce and to perpetuate discordant systems of jurisprudence in the courts, both of original and appellate jurisdiction.

Temporary laws, with a few exceptions, founded either on natural or constitutional necessity, are a barbarous solecism in legislation. To pass a law once, for a limited period, might evince a modest caution on the part of an inexperienced legislature (though even as an experiment, a temporary law could not have so fair a trial as a permanent one), but it would not be easy to justify the colonial practice of successively continuing, from time to time, temporary Acts without amendment. It would be uncandid to throw upon the ambition or

party spirit of any portion of the constitutional legislature of Lower Canada the odium of a system which is so general in colonies, and which has even been sanctioned by the British Government in its instructions to colonial governors; but it is impossible to doubt that the political leaders of the majority of this province have perverted the power of framing temporary Acts into an instrument of factious aggrandizement.

So far as the existence of any temporary law is necessary or useful, the mere lapse of time must place the whole community at the mercy of any one branch of the legislature, and the other branches must be often tempted to purchase reluctant assent by mischievous concessions. As a general instance of the evil, it is almost needless to mention that, so long ago as the year 1825, the Imperial Parliament was obliged to avert serious disasters by passing the Canada Trade Act, perpetuating certain temporary revenue laws of Lower Canada. As special instances of the unseasonableness of temporary laws, we may mention the brief incorporation of Quebec and Montreal, and the Act for establishing registry offices in the townships.

Temporary laws, by encouraging every raw representative to try his hand at statute-making must promote slovenly legislation; and even qualified representatives will too frequently be disposed to overlook the blunders of an enactment, which is only destined to continue for one or two years. The system, moreover, while it reserves too much discretionary authority to the legislature, to be exercised at the caprice of any particular branch thereof, also serves to conceal from the country at large the real amount of legislative labour. Exclude from the statute book of Lower Canada its slightly amended and merely continued laws, and its compass will be reduced very considerably. Deduct from the sum total of the enactments which it contains those that relate to matters purely municipal, which experience proves to be better cared for by local authorities than by general representative bodies, and the remainder will hardly seem of sufficient importance to warrant the expense of maintaining a provincial legislature.

The subjoined tabular statement of the various ordinances and statutes respecting the cities of Quebec and Montreal may be taken as a fair specimen of the petty legislation of Lower Canada.

No. I.

City of Quebec :—Ordinances and Statutes.

Subject.	*Volume.*	*Page.*	*Year.*	*Reign.*	*Chapter.*	*Remarks.*
Markets . . .	Ord.	5	17	Geo. 3	4	Regulates markets of Quebec and Montreal.
,, . . .	13	180	1	Will. 4	28	Partially suspends the foregoing Act till 1st May 1836.
,, . . .	14	262	6	,,	32	Continues 1st Will. 4, c. 28, till 1st May 1840.
Hay-market . .	9	94	57	Geo. 3	16	Leaves regulating of the same in Quebec and Montreal to magistrates of the respective districts.
Bakers . . .	Ord.	17	17	,,	10	Regulates bakers in Quebec and Montreal.
,, . . .	8	40	55	,,	5	Regulates bakers in Quebec, Montreal and Three Rivers, repealing the preceding ordinance till 1st May 1817.
,, . . .	9	40	57	,,	9	Continues and amends the foregoing till 1st May 1819.
,, . . .	9	392	59	,,	11	Continues temporary Acts till 1st May 1821. *N.B.*—Since 1st May 1821, suspended ordinance again in force.
Accidents by fire .	Ord.	33	17	,,	13	Provides against accidents by fire in Quebec, Montreal and Three Rivers.
,, . . .	Ord.	189	30	Geo. 3	17	Amends foregoing ordinance.
,, . . .	13	536	2	Will. 4	37	Establishes fire society in Quebec, suspending so far the two ordinances till 1st May 1834. *N.B.*—Since 1st May 1834, ordinances in force in Quebec.
Police . . .	9	86	57	Geo. 3	16	Provides for regulation of police in Quebec, Montreal and Three Rivers, former Acts having expired on 1st May 1816.
Highways, &c. .	2	56	39	,,	5	Partially repeals 36 Geo. 3, chap. 9, with respect to Quebec and Montreal.
,, . . .	9	183	57	,,	29	Amends foregoing, with respect to salaries of surveyors.

Port of Quebec .	4	68	45	„	12	Regulates shipping in port of Quebec and Montreal, erecting Trinity-house in Quebec, and repealing all former ordinances and statutes, 28 Geo. 3, c. 5, 30 Geo. 3, c. 1, and 37 Geo. 3, c. 4.
„ . . .	54	72	51	„	12	Amends the foregoing Act.
„ . . .	10	204	2	Geo. 4	7	Further amends first above mentioned.
Upper Town Market	4	222	47	Geo. 3	8	Provides for erection and regulation thereof.
New Market-place, St. Paul-street.	12	366	9	Geo. 4	53	Establishes the same.
„ . . .	13	350	2	Will. 4	13	Amends and extends the foregoing Act.
St. Roch's Market .	13	128	1	„	19	Provides for the establishment of the same.
Incorporation . .	13	14	1	„	52	Provides for the same.
„ . . .	13	28	3	„	6	Amends foregoing Act, with respect to time of electing councillors and mode of electing mayor.
„ . . .	13	140	4	„	27	Amends 1 Will. 4, c. 52, with respect to mode of conducting election of councillors.
Beaches, or Strand .	11	392	7	Geo. 4	11	Regulates same until 1st May 1829.
„ . . .	13	332	2	Will. 4	9	Continues and amends foregoing Act till 1st May 1834.
„ . . .	13	72	4	„	3	Continues foregoing Act till 1st May 1836.
Wharfingers . .	13	508	2	„	32	Compels same to advertise unclaimed goods till 1st May 1834; continued, without amendments, by two subsequent Acts, till 1st May 1840.
Assessors . .	12	130	9	Geo. 4	16	Increases number of the same for Quebec and Montreal till 1st May 1831; continued, without amendment, by two subsequent Acts, till 1st May 1840.
Watching and lighting	9	16	58	Geo. 3	2	Establishes the same in Quebec and Montreal till 1st May 1821.
„ . . .	10	82	1	Geo. 4	11	Continues foregoing Act till 1st May 1823.
„ . . .	10	266	3	„	6	Continues and amends 58 Geo. 3, c. 2, till 1st May 1825.
„ . . .	11	10	5	„	1	Continues and amends further, until 1st May 1827.
„ . . .	11	398	7	„	12	And until 1st May 1829.
„ . . .	12	206	9	„	30	Ditto ditto 1833.
„ . . .	13	230	1	Will. 4	34	Continues whole, till 1st May 1834.
„ . . .	13	70	4	„	9	Ditto ditto 1836.

No. II.

City of Montreal:—Ordinances and Statutes.

Subject.	Volume.	Page.	Year.	Reign.	Chapter.	Remarks.
Markets	Ord.	5	17	Geo. 3	4	Regulates the same in Montreal and Quebec.
,,	13	180	1	Will. 4	28	Partially suspends foregoing Act till 1st May 1836.
,,	14	262	6	,,	32	Continues 1 Will. 4, c. 28, till 1st May 1840.
Haymarket	9	94	57	Geo. 3	16	Leaves regulating of the same in Montreal and Quebec to magistrates of respective districts.
Bakers	Ord.	17	17	,,	10	Regulates same in Montreal and Quebec.
,,	8	40	55	,,	5	ditto ditto and Three Rivers, repealing ordinance till 1st May 1817.
,,	9	40	57	,,	9	Continues and amends foregoing till 1st May 1819.
,,	9	392	59	,,	11	Continues temporary Acts till 1st May 1821. *N.B.*—Since 1st May 1821, suspended ordinance again in force.
Accidents by fire	Ord.	33	17	Geo. 3	13	Provides against the same in Montreal, Quebec and Three Rivers.
,,	,,	189	30	,,	7	Amends foregoing ordinance.
,,	12	390	9	,,	57	Establishes fire society in Montreal, suspending, so far the two ordinances till 1st May 1834.
,,	13	190	1	Will. 4	30	Amends foregoing Act. *N.B.*—Since 1st May 1834, ordinance in force in Montreal.
Police	9	86	57	Geo. 3	16	Provides for regulation of the same in Montreal, Quebec and Three Rivers, former Acts having expired on 1st May 1816.
Highways, &c.	2	56	39	Geo. 3	5	Partially repeals 36 Geo. 3, c. 9, as to Montreal and Quebec.
,,	9	138	57	,,	29	Amends foregoing Act as to salaries of surveyors.
Watching and lighting	9	16	58	Geo. 3	2	Establishes the same in Montreal and Quebec till 1st May 1821.
,,	10	82	1	Geo. 4	11	Continues foregoing Act till 1st May 1823.
,,	10	266	3	,,	6	Continues and amends till 1st May 1825.
,,	11	10	5	,,	1	ditto ditto 1827.
,,	11	398	7	,,	12	ditto ditto 1829.
,,	12	308	9	,,	30	ditto ditto 1831.
,,	13	230	1	Will. 4	34	Continues whole till 1st May 1834.
,,	13	70	4	,,	9	ditto ditto 1836

Corporation . .	13	46	1	,,	54	Provides for the same.
,, . .	13	140	4	,,	27	Amends foregoing Act with respect to the mode of conducting elections of councillors.
Wharfingers . .	13	508	2	,,	32	Compels them to advertise unclaimed goods till 1st May 1834. Continued, without amendment, by two subsequent Acts till 1st May 1840.
Assessors . .	12	130	3	Geo. 4	16	Increased number for Montreal and Quebec; continued to 1st May 1840.
Harbour (Police) .	1	1	33	Geo. 3	1	Regulates the bringing of gunpowder into the same, and defends also the same.
,, . . .	4	68	45	,,	12	Regulates shipping in harbour of Montreal and Quebec, creating Trinity-house jurisdiction for both cities, and repealing all former ordinances and statutes, 28 Geo. 3, c. 5; 30 Geo. 3, c. 1; & 37 Geo. 3, c. 4.
,, . . .	54	72	1	,,	12	Amends the foregoing Act.
,, . . .	10	204	2	Geo. 4	7	Farther amends.
,, . . .	13	432	2	Will. 4	24	Partly repeals preceding three Acts, erecting Trinity-house in Montreal.
(Finance) . .	12	686	10 & 11	Geo. 4	28	Provides for improving and enlarging harbour.
,, . . .	13	90	1	Will. 4	11	Extending provisions of foregoing Act.
,, . . .	13	530	2	,,	36	Farther extends ditto.
,, . . .	14	464	6	,,	58	Vests dredging-machine in harbour commissioners, who shall be appointed by any Act to be passed during the present session of the Provincial Parliament.
New Market . .	4	210	47	Geo. 3	7	Provides for building the same.
,, . . .	4	336	48	,,	4	Authorizes erection of temporary stalls.
,, . . .	5	18	49	,,	5	Repeals the foregoing Act, declaring the temporary stalls to be 'new market-house'.
,, . . .	14	38	6	Will. 4	7	Continues the same.
Markets and weigh-houses.	9	400	59	,,	14	Authorizes extension of new market, and erection of weigh-house in each market.
Haymarket weigh-house.	9	94	57	Geo. 3	16	Authorizes erection of same.
St. Ann's Market .	11	408	7	Geo. 4	14	Authorizes establishment of same.
,, . . .	12	276	9	,,	38	Amends and extends the foregoing Act.
Prees de Ville Market	12	282	9	,,	39	Establishes the same.
St. Lawrence Market	12	286	9	,,	40	Provides for establishing of same.
,, . . .	12	700	10 & 11	,,	30	Amends the foregoing Act.
,, . . .	13	236	1	Will. 4	36	Provides for better regulation, repealing former Acts.
,, . . .	10	92	1	Geo. 4	6	Authorizes and establishes the same, but proves abortive.
Common . . .	13	86	1	Will. 4	10	Vests the same in city.

Under legislation so minute and inconstant, the laws by which the affairs of a community are regulated must generally be mere matter of surmise, and inconvenience and incongruity the certain result. The chimneys of Montreal have been swept one year under the Act Will. 4; and the next under a revived ordinance of Geo. 3. The dues on the Lachine Canal, a most expensive public work, were uncollected for a year, owing to the non-renewal of the Act which authorized the collection. In consequence of a like omission, the wharfage dues of the Montreal Harbour were not legally exigible during the same year. Other instances might be adduced to show, that so long as the constitutional legislature exercised its functions, it was possible that local Acts of primary importance to the public interests might be suffered to expire, in order that a single branch of that legislature might, as a condition of the revival of these Acts, extort from the other branches compliance with its demands. In 1836, the House of Assembly declared its intention to adjourn its sittings until its demands had been granted. It is needless to advert to the ultimate consequences of this determination; they are matter of history.*

DIVISION OF THE PROVINCE.

The province of Lower Canada is divided into five districts: Quebec, Montreal, Three Rivers, Gaspé and St. Francis which are subdivided into Counties, Townships, Parishes and Extra-parochial places.

Districts.

The 'Districts,' properly so called, are almost exclusively judicial. They are independent of each other, and differ occasionally, both in the theory and practice of the law; the inferior district of Gaspé being dependent on the district of Quebec, and, in fact, forming part thereof. The only other characteristic of the districts, whether dependent or independent, is, that they have each their own grand-voyer, with the single exception of the district of St. Francis.

St. Francis.—It is to be remarked, that while the district of St. Francis was merely an inferior district, dependent partly on the district of Montreal, and partly on that of Three Rivers, the grand-voyers of these districts had full jurisdiction each of his own section; but now that it is superior and in-

* The capricious legislation of the province has not been rendered less injurious by a steady and well-sustained executive. From the year 1799 down to the present time, the administration of Lower Canada has passed from one Governor to another, on an average, once in every two years.

dependent, some degree of confusion seems to exist with respect to the legal position of the said grand-voyers within its limits. They both act as if no such district were in existence; and yet, by the road laws, any offence against the laws can be punished only within the district where it was committed. A question thus arises as to which district is understood—the judicial or the road district.

Gaspé.—The inferior district of Gaspé includes the two counties of Gaspé and Bonaventure. It contains a scattered population of mixed races, British, Canadians, natives of Jersey and Guernsey, and Acadians. Placed at the *embouchure* of the St. Lawrence, and distant about 400 miles from Quebec, the affairs of Gaspé have occupied but a comparatively small share of public or legislative attention, and its inhabitants are in a most primitive state as regards local improvements. Mr. Power, who represented Gaspé in the House of Assembly, states, that 'the roads in the district are very bad; there are, in fact, no roads in the settlements in the interior. The people are much dissatisfied with the administration of justice. They complain of the distance they have to travel to New Carlisle, the principal town and seat of justice, and wish for a judge in each county. There is but one circuit in the year; there is no description of police; and though magistrates have been appointed, the greater part of them did not qualify, being without the requisite landed property. Law has no great force in the district, people doing much as they like.'

Looking to the position which Gaspé occupies upon the map, it becomes a question whether it would not be sound national policy, as well as for the advantage of the district itself, to unite it with the improving province of New Brunswick. An arrangement of this kind would certainly tend to simplify the administration of Lower Canada, would benefit the district itself, and would render the province more compact for the working of improved institutions. In the event of the severance of Gaspé from Lower Canada, perhaps the most convenient boundary would be the river Mitis, or Rimouski.

Counties.

The counties are principally political subdivisions, laid down with a view to the returning of members to the Provincial Parliament.

By 2 Will. 4, cap. 44, the counties had potentially, for a short time, a municipal character, through the collective action of the road commissioners of the respective parishes, townships, &c., and of the justices of the peace who homologated or

rejected *procès verbaux*; but, as it was discretional with any parish or township to continue under the old system, or to avail itself of the Act, very few counties, more especially in the seigniorial districts, ever assumed the character in question.

By 2 Will. 4, cap. 66, and by 4 Will. 4, cap. 8, the counties, moreover, have had and will, until the 1st of May 1840, have potentially a judicial existence. But of the said Acts only two counties have availed themselves in any degree; and even those two have not established quarter sessions of civil and criminal jurisdiction, which the Acts were intended to introduce.

Parishes and Townships.

Parishes (which, so far as they are ecclesiastical, are almost exclusively for Catholic purposes) and townships are merely divisions for local improvement, and for the better prevention of abuses prejudicial to agriculture. By means of these divisions, the farmers are enabled to provide for the repairing of roads, and the inspection of fences, ditches, watercourses, &c. Each parish and township is subdivided into not more than nine sections. Parishes vary in extent, but the townships usually embrace a superficies of 100 square miles, or 10 miles square, or 64,000 acres each.

Parochial Officers and Parish Funds.

For the management of the secular concerns of the Catholic churches, a court or council exists in the several parishes, composed of three acting churchwardens, and of persons who have filled the office of churchwarden: of the three wardens, the senior is the principal. One of the number is elected every year; in most cases by the court or council, though in a few localities by the *notables* or principal parishioners. Where there is more business than the wardens are able to get through, as sometimes happens, a portion of it is devolved upon the committees of the council. Ten or twelve years ago, Mr. Papineau's party in the House of Assembly brought forward a bill to empower the parishioners to choose their churchwardens. The agitation of this measure, which passed through the House of Assembly, created considerable excitement at the time; but the bill was rejected by the Legislative Council, and ultimately abandoned. Mr. J. Langevin, who has acted as churchwarden in Quebec, says, that the present system of election works satisfactorily, as the persons chosen are generally respectable.

The senior churchwarden collects the pew-rents and all monies owing to the church, which go to the support of the

edifice. Where the business of the parish is extensive and the outlay considerable, a paid agent is chosen to receive and disburse money and register the accounts, which are examined annually by two persons nominated by the council. No salary or entertainment is allowed to the wardens or members of the council. When the funds of the *fabrique* are insufficient for any large undertaking, such as the erection of a church, the requisite assessments are raised in this manner: a list, with the amount of each parishioner's contribution, is made by trustees appointed by the majority of the parishioners; this list is submitted to the superior courts of law, and, should it receive their sanction, becomes an assessment binding on the parties whose names are inrolled in it. The money thus raised is expended under the superintendence of the trustees. The law for regulating this department of parish business is contained in old French ordinances, which are so doubtful and contradictory as to occasion frequent litigation. A suit of this kind was commenced at Three Rivers, which lasted 15 years.

No part of the funds of the *fabrique* is appropriated to the relief of the poor. Mr. Langevin states, that if such a disposal of the parish money had at any time taken place, it must have been by way of loan, or with the formal sanction of the parishioners, on some extraordinary occasion, there being no legal authority for it. The income of the Catholic clergy is derived from their share of all grain grown on the lands of the Catholic parishioners, which share is not a tenth, but a twenty-sixth bushel.

School Districts.

According to the system of elementary schools, each county has been divided into districts, generally, if not always, smaller than a parish or township. The number of school districts has varied under different Acts of the legislature.

PRINCIPAL OFFICERS OF THE DIFFERENT DEPARTMENTS OF GOVERNMENT IN LOWER CANADA.*

Assistant Civil Secretary.
Provincial Secretary and Registrar.
Receiver-general.
Inspector-general of Accounts.

* Every officer of any note in the province is appointed by the Crown, and all hold their appointments during its pleasure.

Clerk of the Special Council.
Inspector-general of the Queen's Domain.
Surveyor-general.
Adjutant-general of Militia.
Commissioners of Crown Lands.
Agent for Emigrants at Quebec.

Administration of Justice :

Chief Justice of the Province.
Chief Justice of Montreal.
Three Judges of the Court of King's Bench at Quebec.
Three Judges of the said Court at Montreal.
Provincial Resident Judge at Three Rivers.
Provincial Judge of the District of Gaspé.
Provincial Judge of the District of St. Francis.
Judge of the Court of Vice-Admiralty at Quebec.
Attorney-general.
Solicitor-general.
Advocate-general.

Sheriffs :

District of Quebec.
,, Montreal.
,, Three Rivers.
,, Gaspé.
,, St. Francis.

Coroners :

District of Quebec.
,, Montreal.
,, Three Rivers
,, Gaspé.
,, St. Francis.

Clerks of the Crown :

District of Quebec.
,, Montreal.
,, Three Rivers.

Clerk of the Court of Appeals :

Prothonotaries of the Court of King's Bench :

District of Quebec.
,, Montreal.
,, Three Rivers.
,, Gaspé.
,, St. Francis.

Clerks of the Peace:

District of Quebec.
,, Montreal.
,, Three Rivers.
,, Gaspé.
,, St. Francis.

Inspectors of Police:

District of Quebec.
,, Montreal.

CUSTOMS.

Collectors:

District of Quebec.
,, Montreal.
,, St. John's.
,, Coteau du Lac.
,, Stanstead.
,, Beauce.

HIGHWAYS AND BRIDGES.

Grand Voyers:

District of Quebec.
,, Montreal.
,, Three Rivers.
,, Gaspé.

SUBORDINATE JUDICATORIES.

CIRCUIT COURTS.

A GRAND desideratum in Lower Canada is a supreme court of original jurisdiction for the whole province; there being at present four co-ordinate courts, each of them supreme in its own particular district. Hence inconvenience, delay, expense, uncertainty and confusion.

The existing system has doubtless been framed, and from time to time extended, with the laudable view of bringing justice as near as possible to every man's door; but it has, unfortunately, had a different effect. To work well, one supreme court must necessarily be accompanied by a thorough organization of circuits; whereas the multiplication of supreme courts not only diminished the necessity for such organization, but was intended to supply its place.

These observations are necessary before entering upon any notice of the present system of circuits, which extends

to the rural districts the jurisdiction merely of the 'inferior terms' of the supreme courts—a jurisdiction little more extensive than that of the commissioners for the trial of small causes—being confined to suits not exceeding the amount of 10*l.* sterling. In the townships not comprised within the district of St. Francis, it is a just ground for complaint, that the circuit stations have not been multiplied since the enactment of 34 Geo. 3, c. 6, to meet the wants of a rapidly-peopling country.

Small Cause Courts.

By 6 Will. 4, c. 17, any parish, seigniory, township or extra-parochial place, on petition of not less than 100 freeholders (200 in the cities of Quebec and Montreal) may call on the Governor 'to appoint as commissioners such and so many fit and proper persons as he shall think fit,' 'to hear and determine in a summary way, according to the facts as proved, and to law to the best of their knowledge and judgment, all suits and actions purely personal (with the exceptions hereinafter made) to the amount of 6*l.* 5*s.* currency.'

The small cause courts are held weekly in the cities, and, in the rural districts, on the first and third Saturday of every month, with power of adjournment. The commissioners act gratuitously, assisted by a clerk, who is paid by fees.

There are various opinions as to the working of this Act, which has been but a short time in operation; the first commission under it having only issued May 20, 1838. In Quebec, there are ten commissioners of English extraction and three of French; many of the latter having declined to accept the appointment when offered to them by Sir John Colborne. One of the most active (Mr. T. L. M'Pherson, notary) estimates the costs of suit at from 5*s.* to 7*s.* 6*d.* He thinks the court might advantageously determine personal causes to the amount of 10*l.* sterling. Mr. Rodier, a commissioner of the Montreal Small Cause Court, states that the weight of the business presses very heavily on the time of the commissioners, who ought, he conceives, to be paid for their services.

In Quebec and Montreal, the court appears to give satisfaction; but there is reason to apprehend that there will be a falling off in the attendance of commissioners, unless they are paid.* Mr. Knoulton, of Brome Township, thinks the

* In Lower Canada, especially among the inhabitants of French extraction, there is a general indisposition to serve the public without pecuniary remuneration. This reluctance is not of recent growth. 'At present,' remarks Sir James Marriott, the accomplished and sagacious Advocate-

commissioners should be allowed reasonable fees for their trouble. The court, he says, works decidedly ill in his district; men being appointed to act as commissioners who are destitute of public regard. The small cause courts will, of course, greatly increase petty and vexatious litigation, and as the commissioners must reside within the limits of their jurisdiction, it is probable that there will be not a few cases of interested oppression. Such courts, if established in and for larger districts, as counties for example, might be placed on a less questionable footing. Local residence would not be so objectionable, and there being a wider circle for the selection of commissioners, it is to be presumed that a better class of persons would be chosen.

Magistrates.—The magistrates are unpaid, and are appointed by the Crown. By a law of the provincial legislature, which will exist until the 1st May 1840, it was provided that every justice of the peace should possess immovable property, worth, after the discharge of all liabilities, at least 300*l.* currency. The practical result of this law was to lead to the withdrawal of some of the most valuable magistrates. The law calling for a qualification in land was also extended to the militia, which caused the dismissal or disqualification of many useful and intelligent officers.

By various provincial Acts the powers of justices are defined and regulated. Sometimes they may act singly, sometimes two together, sometimes three, sometimes in special sessions in any part of the province, and sometimes in quarter sessions in the various judicial 'districts'.

One of their most important duties in quarter sessions is, to decide on the legality or illegality of the grand-voyer's *procès verbaux*—a duty which, as it bears on legal forms rather than on questions of fact, cannot be prudently left to unprofessional men. Hence, among other reasons, an almost universal feeling in favour of having paid professional chairmen of quarter sessions.

To make a judicious choice of magistrates in the rural districts, or even in the cities, must always have been one of the most difficult duties of the provincial executive; and the difficulty has been much increased by the act of qualification, which exemplifies the danger of following too closely the

general, in his "Plan of a Code of Laws for the Province of Quebec"—'at present, the Canadians, as it is stated upon good authority, complain of the attendance upon juries in civil suits as a heavy burthen and interruption of their occupations; though they like well enough to be tried by juries, they do not like to be the triers without some compensation.'

analogies of England. In the corporate towns of England no pecuniary qualification is now required, and in the counties the qualification is so generally diffused as not materially to fetter the judicious exercise of the regal prerogative; and there, moreover, the landed qualification is what it cannot generally be in Canada, a pretty fair index of intelligence and respectability. Here, the qualification was the more uncalled for, as nothing of the kind had been required for the admission of a member of the legislature, whether of the House of Assembly or of the Legislative Council. It was farther objectionable, as open to the charge of being a party measure, inasmuch as it had a tendency to affect more extensively that race which, being newer to the country, and very generally devoted to commercial pursuits, possessed rather personal than real property. Besides, a qualification in land is nominal and delusive in Lower Canada, because from the want of a registry of real estate, even the apparent proprietor, acting in good faith, may be utterly ignorant of the incumbrances on his possessions; and because through the operations of the law of marriage, an insolvent husband may feel himself justified in taking the requisite oath. The system of unpaid magistracy, as incidental to the criminal law of England, was naturally introduced into the province with that law; and the utter unfitness of the people for such an institution is a striking instance of the imprudence of unadvisedly engrafting the code of one country on that of another. There was not in 1763, nor is there now, a sufficient number of men capable from education, intelligence and disinterestedness of deciding singly between contending parties; and the magisterial system ought to be so far modified as to require two or three justices of the peace for every district of any importance. In other words, there ought to be local courts, sitting *at least* once a month in sections of country larger than parishes and townships, and smaller than 'districts', technically so called. The greatest care ought also to be taken to guard against the admission of uneducated, indolent, factious or otherwise improper persons into the magistracy, and the duties hitherto incidental to the office might be advantageously lightened by the establishment of more effective institutions.

Courts of Quarter Sessions.

By the 2d Will. 4, c. 66, and 4th Will. 4, c. 8, both of which Acts will expire on the 1st of May 1840, county courts of quarter sessions, having a civil as well as a criminal jurisdiction, may be held whenever, under the provisions of the said Acts, court-

houses and gaols have previously been erected; half the expense of erecting such edifices being paid by the counties, and the remainder by the province. Such buildings have, however, been erected only in two counties, L'Acadie and St. Hyacinthe, and even in these, with a solitary exception in St. Hyacinthe, courts of quarter sessions have never been held. With respect to the civil jurisdiction of these courts, the law seems to have been hastily framed. It was designed to extend to all claims, whether real or personal, not exceeding 10*l.* sterling; without making any provision for evocation or appeal, even in cases that might be evoked from the 'inferior term' of the Court of King's Bench to the superior,—thence carried to the Court of Appeal, and thence to the Privy Council.

Courts of monthly, or even weekly sessions might be very useful, if controlled and guided by an impartial chairman of professional education—a mixed system which has worked well in Nova Scotia. These courts might furnish, either on the bench or in their grand juries, valuable instruments for county objects of a municipal character, such as the management of the poor, police, &c. One palpable advantage they would afford to the rural population, viz. the means of appealing against a *procès verbal* of the grand-voyer, without incurring the expense and trouble of forwarding it to the chief town of the district.

There were, until 1830, paid professional chairmen of quarter sessions for Quebec, Montreal, Three Rivers and Gaspé, but some of the parties filling the office having fallen under the displeasure of the House of Assembly, they were all obliged to retire in consequence of the House refusing to vote their salaries. The discontinuance of these officers has been a subject of much complaint, and has proved exceedingly prejudicial to the due administration of justice.

PUBLIC BUILDINGS.

THERE are no public buildings of a municipal character in the province other than court-houses and gaols, with the exception of such as will be mentioned under the head of 'The Poor'.

In the court-houses of Quebec and Montreal are held the sittings of the Court of King's Bench, and of the Courts of Vice-Admiralty and Quarter Sessions.

COURT-HOUSES AND GAOLS—(Districts).

These have been built partly at the expense of the province by public grants, and partly at the expense of suitors by fees on suits. There are two of these buildings in Gaspé.

Court-houses and Gaols—(Counties).

By 2 Will. 4, c. 66, amended by 4 Will. 4, c. 8, every county was authorized (voting by parishes or townships) to erect a court-house and gaol; half the cost to be advanced by the government if it did not exceed 600*l.* currency, and the remainder to be assessed on the real property of the county, according to a rule which must be pronounced vague and iniquitous. The edifices were to be repaired, and establishments maintained by fees on suits. Of this Act only the counties of L'Acadie and St. Hyacinthe practically availed themselves, although it held out the advantage of a county court of civil and criminal jurisdiction as the recompense for the erection of a court-house and gaol.

Houses of Correction.

These did exist under temporary laws, and, as might be expected, were purely temporary themselves; they exist no longer.

Court-houses—(Circuits).

There are none; public school-houses are convertible into judicial edifices for the occasion.

Police.

Police may be either preventive or executive.

At the date of the arrival of the Earl of Durham as Governor-general, there was not, in any part of the province, a body of preventive police, the night-watch of Quebec and Montreal (the only force of the kind that had ever existed) having been broken up in May 1836, in consequence of the expiring of the statute in that case made and provided. By the Provincial Ordinance, 2 Vict. c. 2, an efficient system of preventive police was established in the cities of Quebec and Montreal, the authority of which has since been extended by proclamation, issued under the said ordinance, to the respectively adjacent parishes.

The executive police of the province are the captains, subalterns and serjeants of militia, the militia itself being but a nominal force, which includes every male inhabitant between 16 and 60 years of age. By the Permanent Ordinance, 27 Geo. 3, c. 6, militia-men are declared to be, *ex officio*, peace-officers within their respective 'parishes'; and, by the statute 6 Will. 4, c. 37, they are declared to be so within their respective 'districts'. But constables, properly so called, may be appointed by the justices of the peace, acting either singly or collectively; and by 6 Will. 4, c. 19, s. 6, bailiffs

of any Court of King's Bench are authorized to act as constables within the district of such court. The whole militia, too, of the province may be considered as a preventive police, inasmuch as the Provincial Ordinance, 1 Vict. c. 22, s. 13, enacts that 'all or any of the militia in any parish, township, extra-parochial place or county, may be ordered out by the civil authority in execution of the laws.'

Village Police.

For the removal of nuisances and the prevention of accidents by fire in towns and villages, it was enacted by 4 Geo. 4, c. 2, that wherever there were 30 inhabited houses on 15 *arpents* * of land, or less, or on a greater extent of ground a greater number of houses, not more than half an *arpent* apart, the freeholders should meet and choose from their number five trustees, who, on application of three freeholders, should appoint an inspector of the borough or village, to cause the regulations of the Act to be executed, and to enforce penalties. This Act was in force until May 1836, when it expired. It was revived, with amendments, by 6 Will. 4, c. 46, and will expire again in May 1840. According to the terms of this Act, nearly the whole of the Franco-Canadian settlements would be legally classified as villages, so dense is the population.

It may in general be remarked that the criminal law of England, which was introduced by the Royal Proclamation of 1763, and confirmed by the Quebec Act of 1774, necessarily brought with it all its system of executive police; which is, either actually or potentially, still in force, unless so far as it may have been modified by provincial enactments.

The imposition of constabulary duties on the militia is both burdensome and unsafe. Offenders are passed from captain to captain, by whom the serjeants are ordered to take charge of them; and they being indifferent to the due execution of an irksome duty, escapes are frequent, whenever the party in custody has reason to dread the result of his detention. If the *habitans* have any political sympathy with the prisoner, his escape is certain. There are no prisons nor places of temporary confinement in the rural districts; so that a prisoner may be passed from militia-man to militia-man, for 200 miles, before he can be lodged in a place of safe keeping. The system offers no security whatever for the protection of the public peace or the rights of property. The following complaint of the want of a proper police was addressed to the Assistant Commissioners of Municipal Inquiry by three

* An *arpent*, or French acre, is about four-fifths of an English acre.

respectable inhabitants of the township of Hull, in the county of Ottawa, one of them—we believe two—being in the magistracy, Messrs. Wright, Taylor and Brigham.

'You are, no doubt, aware that our situation is immediately on the Chaudière Falls, where pass yearly above 160,000 pieces of timber for the Quebec market. In consequence of the obstruction of the navigation, the whole of the people employed in this branch of business are, from time to time, collected in this vicinity. Frequent breaches of the peace occur, offenders pass with impunity, and because we are unable to put the law in force, many profligate characters commit crimes and persist in their wicked courses, knowing that it is impossible for us to get them to Montreal. Thus a very heavy tax is levied upon the magistracy in attending to complaints. No good results therefrom; in fact, the magistrates have nearly given up the idea of trying to send culprits to Montreal, as all that are sent, as by law authorized (through the militia), have made their escape, and returned worse characters and more difficult to restrain than before.

'You will perceive, from the above facts, that something more efficient is requisite for this place than any other perhaps in the province, with the exception of the cities of Quebec, Montreal and the town of Three Rivers. It is true that provision was made by our late legislature for the erection of court-houses and gaols in the several counties of the province; but the jarring interests called into play by the provisions of the Act have rendered it useless in this county, and, we believe, in almost every other in the province.

'The laws regulating our roads are also very defective; those who make the most use of them not being obliged to do any thing towards their repair. Something should be done to compel merchants and residents, who do not own lands, to do their share of labour in supporting the roads.'

Through the incompetency of the existing legislature to impose even local rates for local purposes, the heavy expense of maintaining the necessary police force of Quebec and Montreal, instead of falling, as it ought to fall, upon the localities that benefit thereby, is thrown on the general funds of the province. It cannot be too deeply regretted that, during the discussions of the passing of the 'Imperial Act', 1 Vict. c. 9, the friends of Lower Canada did not, in general terms, demand the full benefit of the analogy of the Quebec Act, by which the Governor and Council, though restricted as to the power of *general* taxation, had full authority to impose local rates for local purposes.

The absence of this essential power must have crippled every attempt to introduce early and extensive plans of improvement, whether legal, municipal or educational. The following are the enactments respecting matters of rural police.

RURAL POLICE:—ORDINANCES AND STATUTES.

Vol.	*Page.*	*Year.*	*Reign.*	*Chap.*	*Remarks.*
Ord.	185	30	Geo. 3	4	*Abandon des animaux.* Extended by 4 Geo. 4, c. 33, s. 27, and virtually repealed by 6 Will. 4, c. 56, till 1st May 1845.
14	356	6	Will. 4	55	Preserves grass on beaches below city of Quebec.
14	362	6	„	56	Remedies abuses prejudicial to agriculture; consolidating and repealing all former Acts till 1st May 1845.
4	292	47	Geo. 3	14	Provides for appointment of inspectors and constables in towns and villages till 1st January 1811, &c.
10	512	4	Geo. 4	2	Provides for police of William Henry, and other villages, repealing all former Acts till 1st May 1826.
14	322	6	Will. 4	46	Revises and amends the foregoing Act till 1st May 1840.
11	368	7	Geo. 4	3	Provides for maintenance of good order in churches, &c., repealing all former Acts till 1st May 1830: Continued by 10 & 11 Geo. 4, c. 21, till 1 May 1834. Continued by 4 Will. 4, c. 9, till 1 May 1836. Continued by 6 Will. 4, c. 32, till 1 May 1840.
9	74	57	Geo. 3	14	Facilities; administration of petty justice in rural parishes, till 1st May 1819: Continued by 59 Geo. 3, c. 20, till 1 May 1821. Continued by 1 Geo. 4, c. 3, till 1 May 1823. Continued by 3 Geo. 4, c. 2, till 1 May 1825. Continued by 5 Geo. 4, c. 24, till 1 May 1827.
10	368	3	Geo. 4	21	Provides for establishment of fairs till 1st May 1826.
12	748	10 & 11	„	42	Establishes market in village of St. Hyacinthe.
13	8	1	Will. 4	51	Provides for ascertaining boundaries of parishes, 'for civil purposes.'
13	764	2	„	66	Authorizes the erection of court-houses and gaols in the counties till 1st May 1840.
13	64	4	„	8	Amends the foregoing Act.
14	288	6	„	37	Provides for safe conveyance of criminal prisoners from country parts to common gaol.

Schools.

By the 41 Geo. 3, c. 17, which is still in force, 'a majority of the inhabitants' of any parish or township, by petitioning the Governor for the establishment of one or more schools of royal foundation, may subject the whole parish or township to the expense of erecting suitable school-houses for the instruction of pupils and the accommodation of teachers. By subsequent statutes grants of money were made in favour of school districts; and by the more recent Acts of the Provincial Legislature, all of which, however, have expired, such heads of families as were qualified to vote for members of Assembly were authorized to elect school trustees for each school district.

In the session of 1835–6, the House of Assembly sent up a Bill to the Legislative Council, where it was rejected, which proposed to give to the majority of the inhabitants of any parish, township or extra-parochial place, assembled for the purpose, the power of taxation to a certain extent for the support of schools; but it went no farther than barely to *give* the power, neither offering inducement, nor imposing obligation, with a view to ensure its exercise.

Very few, if any, parishes or townships availed themselves of the provisions of the 41 Geo. 3, c. 17, for assessing themselves for the support of schools—one out of many proofs, that optional taxation is not suitable to the people of Lower Canada.

Under the school laws the actual practice has, in all instances, fallen short in point of regularity and efficacy of the requirements of the statutes. Of the various enactments contained in those laws, hardly any are accompanied by provisions calculated to produce their punctual fulfilment and practical operation. As might have been anticipated, they have been neglected or evaded in all those particulars that involved any sacrifice of immediate interest or convenience on the part of the inert and unreflecting mass for whose benefit they were devised.

POOR.

The Poor of Lower Canada, so far as they have been the objects of legislative provision, may be divided into two classes.

First Class.—The first class consists of such individual objects of charity as are to be found in every country—the insane, the sick, the infirm, the friendless, and the destitute.

Second Class.—The second class consists of such multitudes of persons in particular localities as require aid to avert the consequences, whether present or prospective, of an alleged failure of the crops.

The first class has been practically subdivided into residents and strangers.

I. Residents.

Charitable institutions in Lower Canada were early founded by religious communities of the Roman Catholic faith; but we find that previous to the foundation of the General Hospital of Quebec (which is at present, as heretofore, under the charge of nuns governed by a superior), an office for the relief of the poor, '*Bureau des Pauvres*,' had been established at Quebec. The expenditure of this office was controlled by trustees, and every colonist and community was bound to contribute annually to the funds. In the country parishes the maintenance of the poor was provided for in a similar manner.

So far as the statute-book affords information on the subject, it appears that steps towards the support of the poor were first taken by British authority at the commencement of the present century. In the preamble of 41 Geo. 3, c. 6, is recited the substance of a suggestion contained in the Lieutenant-governor's speech, 'for securing and supporting such indigent persons as from a temporary or lasting derangement of intellect are incapable of earning their subsistence, and regarding the means to be employed to prevent the inhuman practice of exposing and deserting new-born infants'. On this suggestion the legislature, 'until further and more effectual provision could be made,' authorized the Governor to apply 1,000*l.* currency a year, for the next three years, for the purposes aforesaid, and for the aid and support of such religious communities as receive and administer relief to sick and infirm persons and foundlings. By a series of temporary statutes the annual grant was gradually raised in the course of eighteen years from 1,000*l.* currency to 3,500*l.* currency, the latter grants having been divided by the legislature in certain unequal proportions between the districts of Quebec, Montreal and Three Rivers. In the Act which raised the grant to 3,500*l.* currency, namely, 58 Geo. 3, c. 13, appears the first symptom of 'further and more effectual provision', as promised by the legislature in 1801. This Act authorized the Governor to apply 2,500*l.* currency for the purpose of building and repairing certain wards or apartments in one of the wings of the General Hospital, near the city of Quebec,

'for the reception and relief of insane persons', and 2,000*l.* currency for building additional wards and apartments for the aforesaid purposes adjacent to those already in use, at or near the General Hospital in the city of Montreal.

The last Act passed on the same narrow basis was 3 Geo. 4, c. 25, granting 5,585*l.* 17*s.* 10*d.* currency for the year 1823; and even in the same sessions other grants were made on a somewhat more liberal basis. The very next Act, namely, 3 Geo. 4, c. 26, granted 850*l.* currency to the Montreal General Hospital, and 2,139*l.* 6*s.* 9*d.* currency to the Hotel Dieu of Quebec, as an aid 'to complete the wards, buildings and dependencies by them recently erected in the city of Quebec, on the ground of the poor of the said Hotel Dieu, with funds arising from savings on the income of the poor aforesaid, and with funds heretofore appropriated for that purpose by the legislature'; and the third Act thereafter, namely, 3 Geo. 4, c. 29, granted 250*l.* currency a year, for two years, to the House of Industry of the city of Montreal.

By the Ordinance 1 Vict. c. 17, of the present year (1838), the following grants were made to charitable institutions to defray the charges of the year commencing in October 1836, and ending in October 1837, viz. 658*l.* 6*s.* 8*d.* currency, towards the expense of supporting the insane persons in the cells of the General Hospital at Quebec; 511*l.* currency towards the expense of maintaining sick and infirm boarders in said hospital, and 100*l.* currency towards their clothing; 580*l.* currency towards the expense of maintaining the foundlings in the hospital of the Hotel Dieu at Quebec, and 15*l.* currency towards their clothing; 200*l.* currency for support of indigent sick in the said hospital 600*l.* currency towards the support of the foundlings in the General Hospital of the Grey Nuns at Montreal; 220*l.* currency towards the support of insane persons in the cells of said hospital; 850*l.* currency towards defraying the current expenses of the corporation of the General Hospital at Montreal; 400*l.* currency towards the maintenance of the indigent sick in the convent of Ursuline Nuns at Three Rivers, and of supporting the insane persons and foundlings under the charge of the Commissioners of the said district; 100*l.* currency as an aid to the lady managers of the Orphan Asylum at Quebec; 75*l.* currency to the lady managers of the Asylum at St. Roch's suburbs, Quebec; 100*l.* currency to the Ladies' Charitable Society (for orphans) at Montreal; 100*l.* currency to the Ladies' Benevolent Society (for widows and orphans) at Montreal; and 100*l.* currency for the Orphans' Asylum at Montreal.

The Montreal House of Industry was established by 58 Geo. 3, c. 15, with very inadequate funds, and agreeably to the last will and testament of one John Conrad Marsteller. With the exception of the aforesaid grant of 500*l.*, it has not received any further aid from the legislature, or any accession to its funds from other sources. For the last two winters an institution, styling itself 'House of Industry', has been maintained in Montreal, chiefly (if not altogether) by voluntary subscriptions, and these almost entirely from the British inhabitants. The constitution of the Montreal House of Industry has been slightly amended by 2 Geo. 4, c. 6; 7 Geo. 4, c. 4, and 9 Geo. 4, c. 43.

By the Act 45 Geo. 3, c. 12, for establishing the Corporation of the Trinity House of Quebec, provision was made for creating a fund for 'decayed pilots and their widows and children'.

II. Strangers.

Strangers having a claim on charitable support have been practically ranked in two classes—Emigrants and Mariners.

Emigrants.—The statute 3 Geo. 4, c. 7, authorized the Governor to advance, for the year 1823, 750*l.* currency, for the relief of indigent sick emigrants, to be dispensed by justices of the peace residing in Quebec; the preamble of the Act holding this promise—'until permanent establishments for the relief of the indigent sick of all denominations can be made, in addition to those which already exist.' Under this Act, the justices of the peace aforesaid established an 'Emigrant Hospital'.

The sum of 600*l.* currency was granted by 4 Geo. 4, c. 32, authorizing the admission into the hospital of 'indigent sick of whatsoever denomination, labouring under contagious diseases,' as well as of 'indigent sick emigrants from the United Kingdom'. Farther grants were made; viz. for 1825, 700*l.* currency; for 1826, 950*l.* currency, including a sum not exceeding 100*l.* currency for a plan or plans of an hospital for the medical treatment of sick seamen and others coming from sea—a partial redemption and a partial evasion of the promise conveyed in the first Act on the subject.

For several years similar grants were made of somewhat greater amount (1,000*l.* and upwards), and, in addition to the Emigrant Hospital at Quebec, a temporary fever hospital was erected at Point Levi, on the south bank of the St. Lawrence, opposite to Quebec, under 10 & 11 Geo. 4, c. 18, 'for the reception and medical treatment of such persons arriving

in this province from seaward as shall be found labouring under typhus fever, yellow fever, scarlet fever, plague, small-pox or measles, and of paupers infected with any of the said diseases' ; the said Act granting 750*l.* currency for 1830 for the purposes recited. For the said establishment, a further grant of 750*l.* currency for 1832 was made by 2 Will. 4, c. 15.

A fund was created by 2 Will. 4, c. 17, for 'defraying the expense of providing medical assistance for sick emigrants, and for enabling indigent persons of that description to proceed to the place of their destination', by laying a poll-tax on emigrants from the United Kingdom, to be paid by the shipmasters, and to be equally divided between the Emigrant Hospital at Quebec, the Montreal General Hospital, the Emigrant Society of Quebec, and the Emigrant Society of Montreal. The tax amounted to 5*s.* currency for each emigrant coming out under the sanction of Government, and 10*s.* currency for every other ; the Act to be in force until the 1st of May 1834. In the same session (c. 60) an aid of 100*l.* currency was granted to the Emigrant Hospital, in addition to a previous aid (c. 15) of 1,500*l.* currency by 6 Will. 4, c. 13 ; the Act of 2 Will. 4, c. 17, was continued to the 1st of May 1838, and by 1 Vict. c. 3, to May 1839.

Mariners.—By 10 & 11 Geo. 4, c. 23, was granted a sum of 11,541*l.* 8*s.* 6*d.* currency, to be advanced in three equal instalments, to build 'an hospital for the reception of sick seamen and other indigent persons' ; and by 3 Will. 4, c. 13, there was a farther grant for completing the building of 2,530*l.* currency, and an additional grant of 2,000*l.* currency for erecting wharves, 'in order to ensure the safety and preservation of said building.'

The 6 Will. 4, c. 35, imposed a duty of a penny currency a ton on 'every vessel from any port out of the limits of this province', the portion received in Quebec to be given to the Marine Hospital, and the portion received in Montreal to be given to the General Hospital of that city ; the Act to be in force until 1st May 1840.

Various Acts have been passed to establish depôts of provisions for the relief of shipwrecked mariners ; the last (6 Will. 4, c. 39) established a depôt near Cape Chat, another at Magdalene River, and four depôts at Anticosti, limiting the appropriations 'to the present year only'.

The second class of persons who have become the object of legislative provision consists, as has been stated, of such multitudes of persons in particular localities as require aid to

avert the consequences, whether present or prospective, of the alleged failure of the crops.

For the relief of this class various measures have been adopted by the legislature; the first object being to enable the distressed applicants to procure seed-grain and seed-potatoes; the second to facilitate the supply of immediate wants.

The legislature attempted to accomplish the first object, sometimes by granting a privilege to the sellers of seed-grain and seed-potatoes, and sometimes by advancing loans from the provincial chest, to be repaid in money or in labour.

The former mode was legalized by 45 Geo. 3, c. 5; 51 Geo. 3, c. 6; 57 Geo. 3, c. 1; 3 Will. 4, c. 2; 4 Will. 4, c. 3 & 4.

The advancing of loans from the provincial chest was carried into effect by various Acts. The most remarkable of these is 57 Geo. 3, c. 12, authorizing the advance of 20,000*l.* on good security; one-half of this sum might, however, according to the Act, be expended as a premium for the sale of seed-corn and seed-potatoes, at a rate varying from 2*s.* to 6*d.* per minot, a Canadian measure one-eighth larger than the Winchester bushel.

The excellence of the security, and the vigilance of the authorities in regard to the loans, may be estimated from the fact, that, of all the expenditure under the Act, only one loan of 8*l.* or 10*l.* has been repaid, and that not by the personal debtor, but by a cautious purchaser of the debtor's land, who cleared it of the mortgage for his own protection.

With respect to the supply of seed-corn and seed-potatoes, it is worthy of notice, as showing the utter absence of principle or system, that the time limited for the sale of these essentials of husbandry was 25th June, in 57 Geo. 3, c. 1; and in 57 Geo. 3, c. 12, 10th May for wheat, and 20th May for any other kind of grain, or potatoes.

The second object contemplated by the legislature, viz. facilitating the supply of immediate wants, had been indirectly promoted by two ordinances passed by the old Legislative Council, 20 Geo. 3, c. 1, and 30 Geo. 3, c. 9, respectively intituled, 'To prohibit, for a limited time, the Exportation of Wheat, Peas, Oats, Biscuit, Flour or Meal of any kind, also of Horned Cattle, and thereby to reduce the present high Price of Wheat and Flour'; and, 'To prevent, for a limited time, the Exportation of Biscuit, Flour or Meal of any kind; also of Wheat, Peas, Barley, Rye and Oats.'

The legislature, under the Constitutional Act, has granted relief, occasionally, in the form of a loan, and occasionally as

a free gift. The most important Act on the subject was 57 Geo. 3, c. 2, authorizing an advance of 15,000*l.* currency, to be repaid by the parties relieved, but without exacting security for its repayment. So far as can be ascertained, no portion of this money has ever been refunded.

By the 9 Geo. 4, c. 50, a loan of 200*l.* currency, for the relief of the parish of St. Louis, Lotbiniere, was advanced on the credit of the *Fabrique*, and, failing that, on the credit of certain individuals on behalf of the *Fabrique*.

The 4 Will. 4, c. 1, granted a free gift of about 3,000*l.* currency, to be divided between certain specified parishes, in sums varying from 37*l.* 10*s.* to 588*l.* 10*s.*

Within the last two years, several thousand pounds have been apportioned among distressed parishes bordering on the St. Lawrence for the purpose of providing seed-corn and seed-potatoes, or sustaining the necessities of the inhabitants until harvest should bring them the means of subsistence. Of these advances, 2,000*l.* have been given to the single parish of Les Eboulemens. No part of the advances has been repaid, nor is it at all probable that any portion ever will be.

The first step towards the correction of this vicious plan of relief was taken during the administration of the Earl of Durham. Applications for aid having been addressed to the Government, his Excellency caused an inquiry to be instituted into the condition of the distressed parishes on the St. Lawrence, with a view to the adoption of such measures as, by striking at the root of the evil, might save the rural population from sinking into a state of helpless and reckless pauperism. A report was made accordingly.

It may be remarked, in relation to the different modes of providing for the necessities and afflictions of the poor of Lower Canada, that some of the arrangements are both objectionable in principle and defective in practice. For instance, it appears that 'insane persons', as well as sick and foundlings, are placed in charge of 'religious communities' of females. Without intending the slightest disrespect to the members of these communities, whom we believe to be actuated by the best motives, we must say, that considerations of decorum, and regard for the proper treatment of the patients, alike forbid their being placed under the superintendence of women. It is discreditable to the province, and more especially to its constitutional legislature, that such an absurd, inefficient and indecent system should have been permitted to continue. Lunatic asylums, conducted on the humane and enlightened principles which generally preside over these

institutions in the cities of Europe, are generally wanted in Lower Canada. For most insane persons, there is, at present, no other receptacle than the common gaol. Is it not, moreover, objectionable, that nearly all relief (part being through commissioners appointed by the Governor) should be dispensed to a mixed population through Catholic establishments ?

In the supplying of seed-corn to distressed farmers, no pains whatever were taken, or enjoined to be taken, to ascertain that the seed was *bonâ fide* purchased or used ; thus a wide door seems to have been opened for collusion between any *habitant* and a favoured creditor, and to the misapplication of such seed as was really bought. So far from guarding against abuses of this kind, the legislature appears to have encouraged them, for the quantity (40 minots of wheat, 30 of other grain and 20 of potatoes) was fixed and constant, without reference to the extent of the purchaser's farm, and the sale might take place under the earlier Acts as late as the 1st July and 25th June ; though, in the latest Acts, the period for the sale of wheat extended only to 18th May, and for other grain and potatoes to 18th June. The obvious tendency of the extension of time in the older statutes was to produce fraud or failure of crops. To obstinate perseverance in the growing of wheat, which is neither suited to the soil nor to the severe seasons in certain districts, much of the distress periodically existing among the rural population is attributable. Yet the legislature, in providing supplies of seed-grain, neglected an excellent opportunity of checking a confessedly unprofitable mode of cultivation, by not withholding the privilege in the case of seed-wheat, a privilege which did no more to promote private than public good, inasmuch as the privilege of the seller, at spring prices, would swallow up most of the crop at autumnal prices.

There is reason to fear that much mismanagement prevailed in many of the local committees appointed generally for purposes of local relief, involving a waste which, without injustice and oppression, could never be recovered by the government from the nominal receivers of the loans.

With respect to all such grants it may be broadly asserted, that, even if more judiciously and impartially regulated, they must inevitably retard the progress of agriculture, and lower the independence of the people. And in a new country, where there is a redundancy of uncultivated land, they form but a puny and fallacious palliative for the evils periodically induced by an ignorant application of agricultural labour. The distressed localities lie chiefly in the district of Quebec,

where the frost sets in earlier than in the districts farther up the St. Lawrence, and where the soil, unrecruited by fallowing or manure, is unable to bear the exhaustion of continual crops of wheat. Now it clearly was the duty of the legislature to have taken advantage of every occasion that presented itself to discourage the growing (or rather the sowing) of wheat, and to promote the cultivation of the hardier crops and the prosecution of the fisheries. The operation of the feudal laws upon agriculture ought likewise to have been considered. The law of mills and the law of *cens et rentes*, for example, tend to encourage the exclusive cultivation of wheat; on the other hand, the law of tithes and the negative law of duty-free distilleries, lead to a more varied agriculture, the former offering a premium on green crops, and the latter on the inferior and hardier kinds of grain.

VAGRANT POOR.

Complaints have been made by persons residing in the townships bordering on the seigniories, of the burden upon the inhabitants caused by the influx of Franco-Canadian poor. They state that township poor are never found levying contributions on the charitable in the seigniories. In the District of Quebec, the parishes on the south bank of the St. Lawrence make a similar complaint, of the influx of the poor from the parishes on the north side of the river. Parochial and township administration of the poor is evidently wanted, though upon very different principles from those which prevail in countries where the land is overstocked with population.

ROADS AND BRIDGES.

Road Officers.

The road officers of the province are the grand-voyer and his deputy in each district (excepting the district of St. Francis, which is, in fact, subject, partly to the grand-voyer of Three Rivers, and partly to the grand-voyer of Montreal); a surveyor of roads in each parish or township, and an overseer of highways in each subdivision of every parish and township, the subdivisions never exceeding nine. The grand-voyer, whose office originated during the French colonial rule, is appointed by the Governor during pleasure. The deputy grand-voyer and surveyor of roads are nominated by the grand-voyer; and the overseers of highways are elected by the people. The grand-voyer is paid by salary and fees, and

pays his deputy according to private arrangement; the surveyors and overseers are gratuitous servants of the public. In the two most important districts, Quebec and Montreal, the yearly salary of the grand-voyer is 150*l.*; out of which he defrays postage, rent, stationery, and all the general expenses incidental to his office.

The duty of the grand-voyer is to open new roads, and to see that the established roads are kept in good repair. His duty, as regards the opening of new roads, he is bound to discharge on the requisition of any one interested person; the requisitionist or requisitionists being liable for the grand-voyer's claim for fees and travelling expenses. Whether he grant or reject the prayer of the requisition, that officer may be presumed to be altogether disinterested in his decision, a presumption which is requisite to justify the judicial despotism of his office. As to the extent of the grand-voyer's judicial power, a degree of doubt, it is true, has existed; some maintaining that an appeal to the quarter sessions may open the merits of the case, and others contending that the court can take cognizance merely of the form and technical accuracy of the *procès verbal*. The highest legal authority has decided in favour of the latter construction of the Act under which the grand-voyer exercises his authority.

In order to discharge the duty of seeing that the established roads are kept in good repair, the grand-voyer, after public notice being duly given, is bound to make 'annual circuit through the highways leading from point to point within his district', and 'to examine and inquire whether the surveyors and overseers duly execute their several offices, and in default thereof to prosecute them, or either of them, for neglect.'

This yearly tour of inspection is made in a very superficial and imperfect manner. According to the evidence of Mr. Panet, grand-voyer for the district of Montreal, there are portions of his district which have never been visited by himself or his deputy. Mr. Panet adduced the strong plea of impracticability in defence of this omission, adding, that the whole expense of travelling would fall on a very inadequate salary, subject already to many deductions for official charges. Apart from the latter consideration, it is too much to expect that the grand-voyer, even with the aid of a deputy, can complete an official annual 'circuit' of the roads in a district so extensive as Montreal.

The surveyor of roads in a parish or township is the grand-voyer's representative therein, as to the repairing of roads, &c.

The overseers of highways support the same character in their respective sections of parishes or townships ; though, as will hereafter be set forth more fully, they have also, in some respects, a collective or *quasi* corporate existence.

Highways.

The public highways are of two kinds—front roads and bye-roads.

The front roads are those that run between two ranges of 'concessions', or through the front range on the banks of rivers, and thus, generally speaking, they cross the breadth of every farm at right angles to its length. As the seigniorial farms are usually 90 *arpents* in extent, in the proportion of ten breadths to one length, and as the *arpent* is equivalent to 3,600 square yards, every proprietor's share of front road is 180 yards French measure. But, in township farms, which approach to a square form, every settler's share of front road is a good deal larger, in proportion to his quantity of land. Such is the general system of front roads ; but there are numerous important exceptions. Hills, bridges, marshes, and all portions of more than average difficulty, which are peculiarly numerous on the undulating surface of the townships, are worked by *joint labour* ; the grand-voyer, by his *procès verbal*, designating all those who, on the ground of a common interest, ought to contribute a share. Through all unconceded land, too, and all uncultivated land in possession of the original Crown grantee, the highways are made and repaired by *joint labour* of the parties to whom 'the road is useful', that is, by the persons who are obliged to pass over it in going to church, market, &c.

The bye-roads, or as they may be most appositely named, the 'cross roads', are altogether made and repaired by *joint labour.*

With respect to the prescribed dimensions of the public highways, every front road is required by law to be 30 feet wide, with a ditch on either side three feet wide ; every bye-road, besides having ditches of like extent, is required to be 20 feet wide.

Fence Viewers.—By 6 Will. 4, c. 56, s. 27, which will expire on the 1st of May 1845, the freeholders of each parish or township are empowered to elect inspectors of fences and ditches, in the same manner and to the same number as overseers of highways.

By the 47th section of the same Act, a majority of the persons interested in the clearing or opening of any water-

course (*cours d'eau*) may cause the work to be done by *contract*, each person interested contributing his share in money, a power analogous to that which, by the existing law, is reposed in a majority of overseers, with respect to joint labour on bridges, and similar to that which, by an expired law, was vested in the majority of parties interested with respect to joint labour on roads and bridges generally.

In several particulars the fence-viewers are invested with more important functions than overseers of highways, or even surveyors of roads. Every inspector of fences and ditches exercises, like the grand-voyer, judicial as well as administrative powers, being authorized singly, and sometimes in conjunction with one or more, to frame *procès verbaux* with regard to joint labour, subject, however, to the revision of two justices of the peace for the county in which the inspector acts. The inspectors are, in fact, official *experts*, and, as such, are allowed a recompense for the loss of time at the rate of 6*d.* currency per hour—a provision which, as it tends to induce popular vigilance, goes far to remedy the evils incidental to the non-responsibility of these officers to any central power.

Road Funds.

There is no law to authorize the exaction of any amount of annual revenue for the maintenance of roads, or other works of utility in the rural districts; charges which, in England, are provided for out of the county rates, have been defrayed in Lower Canada out of the provincial treasury. Large sums, the disbursement of which has been intrusted to unsalaried, but not always uninterested, commissioners, nominated by the Governor generally, on the recommendation of members of the legislature, have been appropriated to the opening of internal communications. Mr. Bouchette, surveyor-general of Lower Canada, in his Topographical Dictionary of the province, gives the following account of the sums voted for the formation and repair of roads and canals from 1814 to 1830.

	£.	s.	d.
From 1814 to 1827, both inclusive, 14 years (including 25,000*l.* for the Welland Canal, Upper Canada)	284,172	–	–
For 1828, 1829, 1830	100,000	–	–
	£.384,172	–	–

The heavy expenditure on road-making has not produced corresponding results. At the present day there is hardly in

the whole province what an Englishman would call a good line of road, while, even in places where from the favourable character of the soil a moderate portion of well-directed labour might afford excellent highways, the roads are (save in summer, when they are simply *bad*) truly and absolutely execrable.

Charges of jobbing, and unfairly directing lines of road through their own property, have been made against the commissioners for applying the provincial grants, and, judging by the general complexion of Canadian management in like matters, probably not without cause. Many of the grants themselves were objectionable on the ground of their being voted for *local* instead of *general* improvements. The direct tendency of such appropriations is to introduce a corrupting influence into the legislature ; the majority having it in their power to withhold from the minority grants for improvements in the districts they represent, and thereby depreciate them in the estimation of their rustic constituents. That the majority of the late House of Assembly did stoop to this description of party tactics is borne out by the testimony of some of its most respectable members of Canadian birth, who have declared that, because they declined voting with Mr. Papineau's majority, they found it impossible to obtain grants for any local object, however unimpeachable in its character.

It may be observed, that whenever a highway requires widening, or whenever it may be necessary to construct a bridge for general as distinguished from purely local purposes, there might arise a question as to the propriety of granting provincial aid, but even then aid ought only to be given in connexion with the permanent establishment of a turnpike, so as to provide a fund for the preservation of the provincial work, and for the payment, if possible, of interest on the original advances. For lack of such an appendage, provincial grants have sometimes been pleas for local oppression. By the 2d Will. 4, c. 44, s. 21, for instance, it was enacted with respect to certain roads in the vicinity of Quebec, Three Rivers and Montreal, 'that no road in the said country districts or *banlieue*, which shall have been macadamised, shall be held to have been in a sufficient state of repair, unless such road shall have been kept in repair in the same manner, and with materials and quality at least equal to that of the materials with which the same was macadamised.' To constrain the parties, who by the road laws are bound to repair the highways, to maintain them according to the terms of this Act

must appear harsh and unjust to those who are acquainted with provincial affairs. The natural and equitable mode of keeping up the roads referred to would have been by turnpikes. A few good turnpike roads fairly introduced in the neighbourhood of Quebec and Montreal would be invaluable as models for imitation. Suburban roads are as frequently used by residents of towns as by country people, and it is only by exacting tolls that the former can be assessed for their legitimate share of contribution to the maintenance of these roads. A turnpike was tried with success on the Lachine Road at Montreal, and after much opposition, the same system has been adopted and approved in Upper Canada.

Amendment of Road Law.

The existing law of roads and bridges is as old as 1796. If age, therefore, is a test of excellence, the continuance of this law is a presumption in its favour. But the repeated attempts of the provincial legislature to remedy the admitted defects of the road system by temporary enactments, prove that the law of 36 Geo. 3, c. 9, has not been retained in consequence of its intrinsic excellence and superior applicability to the wants of the colony.

With the laudable view of facilitating improvement and lessening expense, the Act 2 Will. 4, c. 44, of the provincial legislature authorized the freeholders in any parish or township, or extra-parochial place, to elect a road commissioner, who should within the limits of such parish, township or extra-parochial place, have all the powers heretofore vested in the grand-voyer or his deputy (the powers hereinafter reserved for the commissioners of the county, or the majority of them, alone excepted). According to provincial custom, it was a temporary Act, and expired on the 1st of May 1835. Now to submit a temporary law to the voluntary acceptance or rejection of the people was to divest it even of the character of an experiment. But the measure itself was defective; it contained no provision for the possible case of only *one* commissioner being elected for a county; neither did it create the checks and securities requisite for the working of a novel administrative machinery among a rural population deficient in elementary instruction, and inexperienced in the management of local affairs. The Act, in one word, conveyed too much license to the people, and reserved too small a share of restraining and correcting influence to central authority.

Digest of Evidence respecting the Operation of the Law of Roads and Bridges.

Edmund William Romer Antrobus, Esq., Grand Voyer of the District of Quebec.

A letter dated 6th October 1838, of which the following are extracts, was addressed by Mr. Antrobus to the Assistant Commissioners, explanatory of the duties of the grand-voyer, and the operation of the road laws :—

'The Act for making, repairing and altering the highways and bridges in this province, now in force, was passed in the year 1796. By this Act, the grand-voyers have the direction &c. &c. in their districts.

'The grand-voyer may appoint a deputy. He may cause lands to be cleared, and, in case of heavy works or repairs, may call for the assistance of a parish. He also decides disputes concerning labour, &c. &c., and distributes the work to be done on winter roads. It is his duty to lay out parishes in divisions, for each of which an overseer is elected by the parishioners. He appoints a surveyor of roads in each parish, seigniory or township, also the overseer in default of election, and when vacancies by death or otherwise occur. He (the grand-voyer) is obliged to make an annual tour of inspection, when it is his business to fine his officers for neglect of duty. The *habitans*, generally, wait for the grand-voyer's annual visit, to lay their opinions before him, to whose opinion they bow, and thus many lawsuits and heartburnings are avoided. It has been my good fortune to settle hundreds of these squabbles, and to send home as friends the parties concerned, who, if left to the tender mercies of either the *avocats de campagne* or of the city, might have fought their battles until their means were exhausted.

'When it is necessary to change an old road, or open a new one, &c., a *requête* is presented to the grand-voyer, who, thereupon, calls a public meeting, and, after having heard the parties for and against the prayer contained in the petition, he proceeds to examine the premises personally ; and he afterwards decides upon the line of road to be made, and draws his *procès verbal* by which the road is described, and the persons named who are appointed to make and keep the same in repair. This act is subsequently placed before the court of quarter sessions to be ratified. Persons not satisfied with the grand-voyer's decision have an opportunity to file their opposition to the *procès verbal* before this court, which may reject or ratify the same after hearing the parties ; but

the magistrates who compose the court have only a right to inquire and decide on points of form, and the court is little else, in matters touching the *procès verbaux* of the grand-voyer, than a court of record.

'The above are among the principal features of the Road Act, which, with some amendments much required in consequence of the increase of the population, but which, as you are not likely to amend that Act, it is unnecessary here to mention, I suppose will answer the wants of the people in the road way for the next quarter of a century, perhaps, unless the schoolmaster should be very busy indeed.

'In 1832, the Honourable John Neilson, being then a Member of the House of Assembly and President of the Road Committee, introduced a Bill, which was passed, intituled "An Act to amend the Act (the above 36 Geo. 3, c. 9)", the object of which was to give the *habitans* the management of their road affairs, without consulting the officer of the government, namely, the grand-voyer. By this Act the inhabitants of each parish were authorized to meet, and if the majority of the proprietors present at such meeting chose (it was not compulsory upon them), they might elect a road commissioner, to whom all the powers vested in the grand-voyer were to be transferred. The duration of this Act was limited to 1835. Mr. Neilson, when he introduced this, his favourite measure, in the House of Assembly, was, as many others were at the time, convinced that the period had arrived when the *habitans* might have the management of their own affairs, and might do without a grand-voyer in the settlement of their road concerns; but, before the expiration of the Act, Mr. Neilson having inquired into the way in which it operated, became convinced that the time *had not arrived*, but that, in fact, the new law did not work well. I believe that Mr. Neilson is now quite aware that the period has not arrived when the Canadians may be left to settle their affairs. I have not, at least I do not recollect having met with a single person of respectability, and who has had the good of his country at heart, since 1832, who expressed himself in favour of the change; and, of all parties I have seen—and I have seen the most respectable and most independent—I know of none who did not rejoice that the said Act had expired.

'Among the persons elected (*vice* the grand-voyers) many could not sign their names. I have now in my office (which was constituted one of record by the new law) *procès verbaux* his
to which the X of my substitute is affixed. I mention this
mark

circumstance to show that my countrymen (for I also am a Canadian) are not sufficiently educated to be entrusted with the management of their affairs. In most parishes are to be found a doctor, a notary, and perhaps a couple of *avocats de campagne*, who possess learning, that is, who can contrive to read their names when they have written them ; but the great majority of the inhabitants of Lower Canada are totally uneducated. It would therefore be cruel, I think, to invest them with powers which, the chances are, would be exercised against their interests.'

Mr. Antrobus, in his examination before the commissioners, stated that he had succeeded his father in the office of grand-voyer, which he had now filled for 20 years. Before the introduction of the Road Commissioners Act by Mr. Neilson, petitions had been presented to the legislature, complaining of partiality on the part of the grand-voyers, and praying for an alteration in the Road Laws. The grand-voyers could have no motives for partiality, not being interested in the localities where their duties called them, nor mixed up in the affairs of the inhabitants. The real grievance at the time was the amount of the grand-voyer's fees, and to lighten these was one of the objects of Mr. Neilson's Act. Had that Act been permanent, it would have produced general dissatisfaction. It was adopted pretty generally in the townships, but very sparingly in the seigniories. It worked well in places where competent officers were chosen, and it would be more convenient than the present system, if proper persons could be found to execute it ; but the difficulty is to find educated and disinterested men. The *habitans* will not place confidence in each other. In the Quebec district there is no complaint as to any needless delay in the working of the present Road Law. There is a deputy, who acts for the grand-voyer in each district. He is no additional expense to the country, being paid by private arrangement with the chief, who nominates him. The number of deputies ought to be increased ; and thus, by assigning them judiciously to the different divisions of a district, the travelling charges might be greatly reduced. Were a sufficient number of deputies appointed, the grand-voyer would be enabled to remain, as he ought to do, more constantly at his office, to supply the information required by the *habitans*. The yearly salary of the grand-voyer for the district of Quebec is 150*l*., in addition to which he is entitled to fees on every act of office. Out of these emoluments he is called upon to defray all office charges. The fees are frequently not collected, owing to the poverty of the people. Were it

not for the grand-voyer's expenses, new roads would be frequently opened in places where they do not exist. In appointing surveyors of highways, he (Mr. Antrobus) has usually deferred to the wishes of the people, where the party recommended was likely to be efficient. The overseers of highways could very well execute the duty of fence-inspectors. The surveyors are frequently remiss in prosecuting for neglect of road labour, from the apprehension that, when their neighbour's turn of service comes, they may retaliate their official vigilance on themselves.

In Lower Canada there will never be a good road until a rate is established for maintaining the 'King's highway'.

When the proprietor of a lot is not forthcoming, those to whom the road in front is 'useful' are obliged to keep it in repair. This is unjust, and the law ought to be amended by taxing the land for the maintenance of the road, and, if need be, selling it for the purpose. On the cross roads, people come willingly from a distance to work; and if they refuse, the surveyors employ labourers, and sue the recusants for the payment.

The court of quarter sessions, as at present constituted, is totally inadequate to determine appeals on *procès verbaux*; most of the magistrates being altogether unacquainted with law, and some of them mean, dependent and illiterate. Paid professional chairmen ought to preside at quarter sessions, and then these courts would be competent to their duties. There are magistrates in the province who cannot write their own names. Formerly there were professional chairmen of quarter sessions, but the House of Assembly, it is said, from political dislike to the parties filling the office, caused them to be dismissed. The power of nominating the superior local officers should be vested in the central executive. Pure elective institutions are not suited to the province, as, owing to the jealousy of the *habitans*, fit and respectable men will not be chosen by them. At the same time, it must be admitted, that the grand-voyer system is a source of grievance. The powers of the surveyors might with advantage be extended, and all payments to the grand-voyer equalized, the fees diminished, and the salary increased.

The opening of a road at Ramouski (about 200 miles from Quebec) ought to cost no more than opening a road at Beauport. The Road Commissioners Act might have suited the townships better than the old system, the great comparative extent of the townships not being favourable to the working of the present Road Law. Lands cleared or in cultivation

ought to be assessed according to extent, and not according to their positive value. Wild lands ought also to be assessed, of course, more lightly than cultivated lands. If wild lands are worth little or nothing, let the sale of them be the only penalty on the proprietor for non-payment of rates ; but it is most unjust to constrain settlers to make roads which add to the value of wild lands, and yet leave those wild lands untaxed. Among the mass of the population, it will be impossible to raise a local assessment, unless payment be made compulsory. The people in the townships are fitted for a more advanced system of local administration than the inhabitants of the seigniories.

No respect will be attached to the courts of quarter sessions until they have paid professional chairmen of learning and integrity. Being ignorant of law, the magistrates are liable to be bullied by the lawyers, and there is no assurance of their arriving at correct decisions or deciding upon proper grounds. No unprofessional man likes to act as chairman of quarter sessions ; he has himself remained absent from the court rather than act in this capacity. The magistrates at quarter sessions sometimes decide upon the merits of a *procès verbal*, which is a usurped authority, and absurd in its exercise, the court not having the power to examine witnesses on oath in the matter at issue. This power is vested in the grand-voyer, who also judges of the affair at issue on the spot. The Court of King's Bench has decided against the assumed authority of the magistrates in regard to the *procès verbal*. Perhaps an authority of this description might be advantageously conferred on county courts, accompanied by some modification of the duties of grand-voyer. The more able members of the magistracy have become disgusted by the appointment of inferior persons to the bench, and consequently have grown remiss in the execution of their duty.

Hughes Heney, Esq., Grand Voyer of the District of Three Rivers.

Mr. Heney is of opinion that, in establishing a system of rural municipalities, it would be advisable to preserve an efficient central authority, were it only for the keeping of the road archives. He fears that if the control of municipal affairs were committed entirely to the country people, it would give rise to favouritism ; besides, a sufficient number of persons could not be found competent to discharge the functions that might be assigned them. The cost of a *procès verbal* for open-

ing a new road in the district of Three Rivers is about 12*l.*, exclusive of the fees of the clerk of the peace, which amount to about 1*l.* 15*s.* The magistrates have not, in general, sufficient intelligence to qualify them for 'homologating' *procès verbaux*. By Mr. Neilson's Act, the *procès verbaux* were to be deposited with the nearest magistrate; after whose decease, copies could not have been obtained.

There is no legal authority to authorize the grand-voyer to demand any part of his fees in advance. The fees are very badly paid; so many small sums being due by poor persons. He (Mr. Heney) has very often lost his fees, or a great part of them; even when the *procès verbaux* have been homologated. He has only, on two occasions, been paid his fees in full. When a requisition has been made to the grand-voyer, it is the *custom* to pay him one-third of his fees.

The greatest grievance now experienced under the grand-voyer system would be removed by the appointment of deputies residing in the districts for which they may be called upon to act. By this means, the charges would be equalized, instead of falling, as they now do, more heavily on the poorer and more remote districts. He (Mr. Heney) has a deputy in the townships; were it not so, the expense would be unreasonably heavy. In the district of Three Rivers, there are in fact two deputies; although the existing law authorizes the appointment of one only. He wishes that he had the power of appointing another. It is possible that the St. Francis district does not fall legally within the road jurisdiction of Three Rivers. Some of the townships of the district are under the superintendence of the grand-voyer of Montreal.

The yearly salary of the grand-voyer of Three Rivers is 90*l.*, out of which he has to provide for all office charges, postage, and the expenses of his annual circuit. The gross amount of his fees for the last year was about 140*l.* The receipt of fees does, to a certain extent, give an interest to the grand-voyer, which might prove prejudicial to justice. When the roads are contiguous, and the locality poor (the same parties being interested), Mr. Heney has united the different roads applied for—amounting sometimes to 16—in one *procès verbal*, and thereby greatly diminishing the expenses.

The *habitans* could not, he thinks, be induced to tax themselves for municipal purposes, or to pay turnpike tolls. They would rather make a circuit of leagues than pay a turnpike. They would not consent to give a money payment, instead of labour value to a greater amount; time and labour being

in their situation of comparatively little moment. They have not assessed themselves for schools or gaols, as they were invited to do by law. They are, however, bound by law to build and repair their churches, and they pay pew-rents in money besides.

Unoccupied lands should be made liable for the maintenance of roads and bridges. The wood upon them, when required, should be taken for this purpose, and if necessary, part of the land sold to pay the share of the road expenses, with which, in equity, the property might stand chargeable.

The law, as at present, does not authorize payment to the owners of uncleared land through which roads may pass. This sometimes operates unfairly, as, for instance, in the neighbourhood of towns a road may pass through a 'sugary', which is a valuable description of property. A discretional power in this and other points ought to be reposed in the grand-voyer. The road regulations are too imperative. The grand-voyer, or some parallel authority, ought to have the power of adapting the construction of roads to the character of the soil. The law enforces the making of ditches of a certain width, although ditches are frequently not required at all; no regulation ought to be made legally absolute, except that which prescribes the breadth of the road.

Pierre Louis Panet, Esq., Grand Voyer of Montreal.

There are about thirty-four townships in the district of the grand-voyer of Montreal. There are also three townships in the district of St. Francis under his control; Stanstead, one of them, is 90 miles from Montreal. The deputy of the grand-voyer of Three Rivers is likewise deputy of the Montreal grand-voyer in these townships. Mr. Panet has never visited them in his 'annual circuit', not having time to do so.

Fees are regulated by tariff, approved at court of quarter sessions. The Montreal tariff is different from that of Quebec. The average cost of a *procès verbal* in the Montreal district is from 11*l.* to 15*l.* currency, exclusive of the fees paid to the clerk of the peace. The fees of the grand-voyer are very badly paid; he (Mr. Panet) believes he does not receive one-half of his taxed charges. His yearly salary is 150*l.*, out of which he defrays all the expenses of his office. Is of opinion that the fees should be relinquished, reserving only so much as would stimulate deputies to the discharge of their duty, and prevent idle applications from the country people. By a rule of the court of quarter sessions, the grand-voyer of Montreal has a right to claim four shillings a day towards

travelling expenses (going and returning) before he starts. The power should be vested in the grand-voyer of appointing a greater number of deputies. His (Mr. Panet's) deputy resides in Montreal. The townships of the Ottawa are in the Montreal district, but so distant that the grand-voyer has never had an application from them, neither has he visited them in his annual circuit. The Act giving to grand-voyers the right of appointing more than one deputy expired in 1825. If the number of deputies were increased, the amount of fees received by the grand-voyer would be proportionally lessened. The gross amount of the fees received annually for the district of Montreal may average about 300*l*. The Road Commissioners Act was put into operation chiefly in the townships. In the parishes of some counties there was not a sufficient number of magistrates to 'homologate' the *procès verbaux*. About one-half of the parishes in the Montreal district elected officers under the Act. Has heard that the opening of an extraordinary number of roads was legally approved when this Act came into operation. For example, in 1834 and part of 1835, 52 new roads were sanctioned in the county of Beauharnois. Mr. Brown, of Beauharnois, represented at the time to his brother magistrates, that these roads were too numerous to be completed, but the bench out-voted him. The grand-voyer's emoluments are in no degree affected by his acceptance or rejection of a petition, and whether he complies with or rejects its prayer, he frames his *procès verbal*.

Large sums of money have, since 1815, been granted for road-making by the provincial legislature. In the first instance, the grants were placed at the disposal of commissioners appointed by the government, who were empowered to lay out their roads according to their own discretion, and expend the money on them. Great complaints of mismanagement and non-appropriation arose, and, subsequently, a better system was adopted, by which the road for which the money was granted was especially designated, and vouchers required for accounts. The money thus granted was chiefly expended in the townships; the settlers there being so much impeded by the crown and clergy reserves as to feel necessitated to call upon the government to aid in opening roads.

Under Mr. Neilson's Act, although the commissioners had no fees, the expenses were occasionally greater than under the old law. There were various disbursements to make, as, for instance, for the payment of a sworn surveyor and a notary to draw up the *procès verbal* and furnish copies thereof; none of which charges were exacted from the applicants under the

grand-voyer system. In the townships, which sometimes did not employ a sworn surveyor, there was a saving, but little was gained in the seigniorial districts. The commissioners did very little in the fifty parishes which adopted the Act, owing to the difficulty of procuring magistrates to homologate the *procès verbaux*, and the short duration of the law. Only 30 or 40 *procès verbaux* proceeded from these parishes; the remainder, of 150, for the Montreal district, were from the townships. There are about a hundred parishes in the district of Montreal.

Mr. Panet is of opinion that enlarged municipal powers might be entrusted to officers popularly elected, so as to unite in the same body the superintendence of roads, fences, pounds, water-courses, &c., preserving, however, so much of the grand-voyer system as would leave the opening of new roads to officers independent of the localities interested, and free from such personal ties as might be supposed to influence their decisions.

The *habitans* would be very reluctant to pay a regular annual tax; but they would not object to be assessed for any necessary and clearly-understood object as occasionally might arise, such as the repair of roads or the construction of bridges. It would be quite practicable, indeed it has been the custom in many cases, to repair bye-roads by contract, levying the amount expended by assessment. This practice is a convenience to farmers, who might otherwise, when living at a distance from the works, be put to considerable trouble and expense in contributing personal labour.

It would be well to exact money contributions in all cases, except for the front roads or highways; and for these, the kind of contributions, whether of money or of labour, might be left optional. The Act of 1825 was framed with this view; but the intention of its authors was frustrated by the clumsiness of the machinery employed.

A portion of the provincial funds might perhaps be usefully appropriated in laying out great lines of road, under the direction of government engineers, and taxing the people for their support, in proportion to the local advantage they derived from them.

The apportionment of money payments is made by overseers. It would much facilitate their labours, and promote an equitable assessment, if the overseers of parishes or townships were authorized to keep a register of the lands or rateable property.

Much inconvenience is occasioned by the postponement of

procès verbaux from one quarter sessions to another. Paid professional chairmen are absolutely essential to the efficiency of courts of quarter sessions, and power should be given to magistrates to decide postponed *procès verbaux* in special sessions, to avoid the delay of three months, which, in the climate of Canada, must materially retard improvement.

Jacques Viger, Esq., Surveyor of Highways for the Parish and City of Montreal.

Mr. Viger, in the country part of his district, exercises an authority similar to that of the grand-voyer, assisted by nine overseers or sub-inspectors of highways. In the city, by a clause of the Road Act, the surveyor of the highways is inspector also; so that Mr. Viger, the inspector in Montreal, bears the same relation to Mr. Viger as surveyor that the overseers bear to him as grand-voyer in the country part of his district. In his character of inspector, he is called upon to superintend the execution of the work prescribed or suggested by himself as surveyor, and his city duties are so multifarious, that an overseer named by the magistrates really discharges the duty of inspector. When the opening of a new street is deemed necessary, a petition to that effect is forwarded to the magistrates, who, if favourable to its prayer, call upon the sheriff to form a jury of 12 to be sworn before them at special sessions, and to report upon their oath whether the desired improvement be useful and necessary. If the jury report in the affirmative, the magistrates are empowered to treat and agree with the proprietors of the ground through which the street is to pass. If there be a difference as to terms, the matter is left to arbitrators, whose judgment is final; the losing party paying costs of arbitration. After the plan has been adopted, it is the duty of the surveyor of highways to trace the line of the road or street.

In the construction of a sewer or bridge for the city, the surveyor proceeds by *procès verbal*, which is submitted to the magistrates, notice being given to the parties interested to appear to offer their objections within eight days. The magistrates decide in the same way as in the case of an appeal against the grand-voyer's *procès verbal*. After the *procès verbal* has obtained the sanction of the court, the surveyor of highways passes from the character of grand-voyer into that of road-inspector, and proceeds to superintend the erection of the work thus approved by the court.

Mr. Viger's income is derived partly from salary, and partly

from fees, as regulated by tariff. His salary is 200*l.* a year, payable out of the 'road fund'. His fees have declined to a small amount, his country district being limited to a parish, for which *procès verbaux* are now rarely required; the roads demanded by public concurrence having been already opened, and new streets and sewers being seldom wanted for the city.

Mr. Viger thinks favourably of the turnpike system as regards the maintenance of highways, more especially in the neighbourhood of large towns. The bye-roads he would leave to be maintained by the farmers by contract, as recommended by Mr. Panet,—a practice which has been voluntarily adopted by the people apart from legal enactment. The road from Montreal to La Chine was 16 years turnpike, and paid expenses, and gave satisfaction. The farmers in the immediate vicinity of a large town are not able to maintain the roads, nor is it fair that they should be constrained to do so. After the La Chine road again came under the old system of management, and ceased to be turnpike, a rich and educated man residing on the line returned to the obsolete and defective system of repairing his portion of the road, a system which had been relinquished for 16 years,—a proof of the obstinate adherence to ancient usages which prevails even among the better class of persons in the province.

Joseph Bouchette, Esq., Surveyor-general of the Province.

Mr. Bouchette stated that the grand-voyer system had never been popular; it was both tedious and expensive. There ought, he conceived, to be a new municipal subdivision of the province, and proper officers assigned to the different localities for executing the duties expressly assigned to the grand-voyer.

Poor settlers in the townships are hardly dealt with in being obliged to make new roads through large blocks of uncultivated lands. The holders of those lands ought, in equity, to be called upon to contribute to the roads. A precedent for exacting road duty from absentee proprietors had been set in Upper Canada, where the remedy, Mr. Bouchette alleges, has proved effectual.

Paul Holland Knowlton, Esq., J.P.

Mr. Knowlton, of Brome township, county of Shefford, is a colonel of militia, and a member of the special council, under the administration of his Excellency Sir John Colborne.

In a written communication, Mr. Knowlton submitted the

following general suggestions to the commissioners. His own words are quoted :—

'First. It appears to me that a new subdivision of counties should take place ; and, if not done by some such power as that with which you are invested, it never can be done ; for there are those among us, and they are not few, whose local interests will be, or they will fancy them to be, affected by the first subdivision ; and who would move heaven and earth sooner than suffer any loss of property, or of supposed consequence. These considerations must all be set aside ; and the only question to ask is, What is best and safest for us as British subjects ?'

'Second. Give us county courts, or establish new districts. In either case let there be a competent jurisdiction, with a respectable law judge, or with circuit judges, as may be deemed best, bringing the court as near the door of the suitor as possible.

'Third. Abolish the grand-voyer system of road-making, which is illegal under the English tenure, and give us power, in each township, to alter and execute every thing pertaining to highways ; matters can be better managed, and at far less expense, by those who have the roads to make than by the grand-voyers.'

Mr. Knowlton, being examined by the commissioners, stated that the expense and delay of the grand voyer system were the subject of much complaint ; it was altogether unsuited to the condition of the people in the townships. The grand-voyer, unless specially called upon, had never made an official visit to the townships. The people of those localities are perfectly competent to manage their common affairs, and all road business might be left to them with great advantage. Their fitness had been proved by the experiment under the Road Commissioners Act ; but that Act was defective, inasmuch as the commissioners were bound by the old road laws, which were ill adapted to the townships. Without a new and complete subdivision of the province, no improved system of local institutions can be efficiently established. Such a subdivision must be matter of imperial legislation, as, if left to provincial arrangement, private interests would interfere injuriously.

Mr. *Macbean*, of De Rouville Mountain, in the county of Rouville, thus alludes to the road system in a letter addressed to the commissioners, bearing date September the 10th, 1838 :—'I beg you will give your particular attention to the present manner of repairing roads. I conceive the system to be most objectionable. The duties upon the overseers are

oppressive, and quite unrequited by remuneration; while the practice of giving personal labour upon the road, exerted as it is at your own discretion, and upon a particular spot, contributes really nothing either to its present or paramount improvement.

'At their own convenience, after seed-time, they turn out at summons of their surveyor, and throw clods upon the road until it is almost impassable for a few weeks after. When it has become beaten down, it is no more looked after, and the remaining or subsequently formed ruts are left unfilled during the whole season. Oftentimes bridges are broken down or planks removed from their covering, and they remain for weeks unrepaired. The bridge over the Huron or St. J. Baptiste river, above Point Olivier, which fell down last winter, has not yet been repaired or rebuilt, and no one seems to say it is wrong or knows any thing about it. These things penetrate a person from "the old country" to the quick, and continually stick to and torment him. They are really a never-ending source of chagrin.'

Mr. *Henry May*, of Verdun, on the Lower Lachine road, near Montreal, after calling attention to the 'imperfect and vexatious manner in which the roads of the district are made and repaired, and to the dangerous state in which they are for the greater part of the year,' urges the necessity of establishing 'turnpike roads, under trusts or commissioners, to the principal outlets to Upper and Lower Canada'. 'This', adds Mr. May, 'would not only relieve the agriculturists situated on these roads from vexatious interference, at a time when their attention ought to be directed to putting in their crops and harvesting the same, for the short period of the year in which agricultural operations can be carried on, but would likewise greatly improve the entrance to the city of Montreal.'

Mr. *Charles Howard* and others, proprietors and landholders of the parishes of Charlesbourg and Beauport, in the neighbourhood of Quebec, state, in a memorial praying for relief, that the mode of giving notice under the Road Act is extremely inconvenient to persons not belonging to the Catholic faith nor residing in the vicinity of the parish churches. The memorialists also complain of the custom of partitioning off small patches of roads for them to keep in repair at a distance from their houses, and profess a willingness to repair a larger portion of road adjacent to their places of residence. Another grievance to which they advert is the practice of overseers, who, when difficulties arise between them and the farmers,

have recourse to advocates, and issue summonses from the police office, 'thereby heaping ruinous expenses on them, and injuring them with impunity.' They pray for a less expensive and more summary mode of trial, so that the penalty may be proportionate to the offence.

Mr. *Charles Houle* and others, inhabitants of the township of Stanfold, Somerset and Nicolet rivers, in a memorial praying for the grant of public money for the opening of a road, represent that they have been five years residing in these districts, and number about 200 families, and that they have no means of communication from their houses to the highway by which they might convey their potash to a market.

David Chisholm, esq., formerly clerk of the peace at Three Rivers, thus describes the effect of the present road system in promoting litigation among the country people :—

'In the general and special sessions of the peace, and before single justices, complaints are almost daily brought against some offender under the road law. Sometimes a common informer files a *qui tam* prosecution against a *habitan* for permitting, for instance, a *cahot* to be upon the public highway in front of his house or property. Sometimes the surveyor, or overseer of roads and bridges, is prosecuted for not doing his duty; that is, for not taking care that the good order of the roads is properly attended to. Sometimes, as there is a gradation of road officers, the one prosecutes the other for a neglect of public duty. The grand-voyer informs upon his inferiors, and, in return, the grand-voyer himself is not unfrequently charged with official dereliction.

'The road system has always been a most fruitful source of petty, penal litigation in this province. The moment neighbours quarrel, the first thing they do in order to gratify their animosity is to prosecute one another for some breach of the road law, an offence easily substantiated against almost every landholder in the country. Such prosecutions are of course legally resisted, not only with the view of escaping the prescribed penalties, but also in the hope of gaining a judicial victory over private vindictiveness. Lawyers are employed, and the French Canadian will spend his last penny to get the better of his antagonist; the consequence is, that many of the *habitans* have been driven to want and even to beggary by this propensity to litigation, a passion so congenial to the natures of an ignorant and semi-civilized people.

'As to prosecutions under the road law, I have known many of them to commence before a single justice of the peace for a penalty of 5*s.* which terminated before the Court of King's

Bench, after exposing the parties to an expense for law proceedings of 15*l.*, 20*l.* and even 30*l.* There are, first, the proceedings before the justice or justices in special or weekly sessions—not at the door of the litigant, but at Quebec, Montreal or Three Rivers, frequently many miles distant from the homes of the contending parties. There is, next, an appeal to the quarter sessions; and as it is impossible that the decision of any court can satisfy both sides, there is, lastly, a writ of *certiorari* to the Court of King's Bench, which, before it can be returned, will cost, at least, 5*l.* in fees to court officers, besides the usual consideration to lawyers.

'Now, although it is impossible to enforce the provisions of any statute imposing penalties, without admitting the right of any one that chooses to prosecute for these penalties, still, in a country where indolent habits are so prevalent, and where there are thousands who would expend their last farthing on law rather than repair a piece of road, at the cost of, perhaps, a few hours' manual labour, it seems absolutely necessary to have recourse to some more efficacious methods of enforcing the road law than those prescribed by the Act. Resort must be had to some system of municipal superintendence and direction similar to that which exists in Upper Canada. To be sure, the roads in that province are sometimes bad enough, but that is not the fault of the law; it is the effect of a scanty population, and a corresponding want of funds for carrying the provisions of the law into execution.* At any rate, if there were no other blemish in the road laws of Lower Canada than the facility which they afford to the litigious propensities of the French Canadians, no time ought to be lost in applying a remedy to the evil.'

* This observation explains the cause of the imperfect working of the municipal machinery of Upper Canada, where the laws are framed in a manner very superior to those of the Lower Province. Persons who are disposed to regard the local administration of the United States as a model for other countries, will probably be unwilling to believe that in the State of New York, whose prosperity has been immensely increased by its canal and railroad communications, the management of the roads is extremely defective, although there is a large population, possessing abundant resources. The last message of the Governor to the legislature of the State of New York contains this reference to the subject: 'The present condition of our highways has resulted from the necessity of constructing roads over an extended surface, with the scanty means and efforts of a sparse population. But this inconvenience has, in a great measure, ceased to exist. The labour expended on our highways is a grievous tax, and yet our roads are scarcely improved. Their summer repairs accomplish little more than restoring them to the condition they maintained before the injuries of the winter season occurred. The evil lies in a misapplication of the labour assessed.'

CITIES AND TOWNS.

Each grand division of the province has its capital, the seat of district jurisdiction; Quebec, Montreal and Three Rivers for their respective districts of the same name; New Carlisle for the inferior district of Gaspé, and Sherbrooke for St. Francis. The population of Quebec has been estimated at 30,000 (the British and French Canadians being nearly in equal numbers); of Montreal (where the majority are supposed to be British) at 36,000; of Three Rivers, 3,000. New Carlisle and Sherbrooke are as yet rather villages than towns. Quebec and Montreal alone have been incorporated.

A stranger arriving at Quebec experiences at every step the discomfort occasioned by the absence of good local government. He finds streets narrow and ill-paved, huge wooden steps projecting, in contempt of the law, across the broken and unsocial *trottoir*, to the imminent peril of the unwary passenger; unwholesome water, sold by carters who take it from the St. Lawrence; and a total want of public lights: a lantern is the usual resource of those who are obliged to explore their way through the streets on dark and stormy nights. Such is the capital of British North America,—a city beautifully situated, and possessing an extensive commerce.

Montreal has, in some respects, more of British improvement in its appearance and arrangements than Quebec; the paving is indeed very defective, but the new lines of streets are well laid out, and the obstacles to pedestrians are fewer and less formidable than in the provincial capital. A good supply of water is furnished by an incorporated company; and there is a gas company prepared to light the town whenever the local authorities are empowered to conclude an agreement for that purpose. As, under the existing legislature of Lower Canada, no new tax or rate can be imposed, Montreal remains in darkness during the nights of winter, at a time when military guards are planted in almost every street, and the citizens are constantly disturbed by alarms of invasion and insurrection.

From the middle of November until May the inhabitants of the cities are held responsible, under the road law, for the state of the highways and footpaths in front of their houses. It is thus left to individuals to remove the obstacles caused by the snow, instead of resorting to the far more efficient and less annoying mode of providing for the performance of the work by general assessment. Many persons, finding it

inconvenient to discharge the duty through servants of their own, have recourse to professional street-clearers, who undertake to keep the ways free from obstruction during the winter season, at a certain specified rate of charge.

The following announcement, taken from the Montreal newspapers of this year, will explain the practice more clearly than general description :—

'Winter Roads.

'Captain B. S. Schiller will, during the winter season (commencing 1st December, and ending 1st May) undertake to keep the roads free from *cahots*,* and to take away the ice and rubbish. He will also clear the footpaths. The charge for the above will be 6*d.* per superficial foot, payable as follows :—One-half on the 1st of December, and the other half on the 1st of March.

'Captain S. hopes his friends will continue the patronage with which he has been favoured during the last 17 years.'

Closely connected by commercial relations with Upper Canada, Montreal, under a stable system of government and enlightened institutions, would advance with great rapidity, and become, ere long, one of the most flourishing emporiums on the American continent. Its trade—indeed the whole trade of the province—is almost entirely in the hands of the British. An inclination to commercial pursuits is rarely displayed by the Franco-Canadians ; on the contrary, they seem to regard the mercantile class with jealousy and dislike, and their occupations with something approaching to scorn. And what is the result of their anti-commercial habits and foolish prejudices ? The division of landed property, which takes place under the law of inheritance daily, reduces the means of the more opulent families. The young men of these families

* The French word '*cahot*', literally, a jolt or shake, is applied in Lower Canada to the inequalities on the winter roads, caused by the masses of snow accumulated, in consequence of the clumsy construction of the winter carriages in use among the *habitans*.

Where '*cahots*' abound, they destroy the pleasure of sleighing, and add materially to the fatigue of man and horse during a long journey. No such nuisance exists in the townships, Upper Canada or the United States. Attempts have been made, but in vain, by the authorities, to coerce the *habitans* into a reform of their vehicles ; had these attempts been persisted in, the country folks would probably have shown their determination to uphold the jolting system, by stopping the supplies to the town markets. It is indeed recorded, that such was actually the case, and had the effect of causing the Governor and Legislative Council of the day to repeal an ordinance prescribing, under a slight penalty, a small alteration in the form of the Canadian train or cariole.

are destitute of the skill and capital required for profitable agriculture, even if they were disposed to maintain themselves by farming. The Catholic Church offers few temptations to the young and aspiring colonist; and there is no army or navy to open a way for him to distinction. Law and medicine are the only professions that hold out the hope of elevation and independence; but these professions are too crowded to render it possible for the majority of practitioners to obtain a satisfactory share of public favour, and consequent emolument. From professional disappointment arises political place-hunting, which, baffled in its object, too often expands into a wild desire for change, criminal in its means, desperate in its aims, the growth of mortified pride, narrow experience, and an unreasoning ambition.

Under a temporary Act, Quebec and Montreal were watched and lighted, after a sort, down to May 1836. The funds were altogether unequal to the proper support of these essential branches of civic government. Lamps fed with oil were distributed at intervals, 'few and far between'; and the guardianship of the night was intrusted to a meagre selection of the class of veteran servitors, of whose impotency for all useful purposes the people of London were cognizant before the establishment of 'the New Police'.

A constabulary force for day and night service in Quebec and Montreal, on the plan of the metropolitan police, has been organized under an ordinance issued during the administration of Lord Durham. The force in each city is placed under the direction and supervision of an inspector and superintendent, who is also a justice of the peace, and acts in that capacity. The propriety of uniting the functions of magistrate and executive chief of police in one and the same person may well be questioned; but in these particular cases it may doubtless be justified on the ground of present necessity. Such a necessity would cease to exist, if Quebec and Montreal were again incorporated upon safe, equitable and comprehensive principles.

Mr. T. A. Young, inspector and superintendent of police for Quebec, has furnished the subjoined return of the force on duty in that city, as a day and night police, on the 27th of September 1838; with a statement of the expense of its maintenance, and an estimate of contingencies.

QUEBEC CITY POLICE.

	£.	s.	d.
One inspector and superintendent, per diem .	1	–	–
One chief constable . . . „ . .	–	6	–
One serjeant-major . . . „ . .	–	4	–
Two serjeants, at 3s. 6d. each . „ . .	–	7	–
Four corporals, at 3s. each . . „ . .	–	12	–
Twenty-four privates, at 2s. 6d. each „ . .	3	–	–
Expense per diem	5	9	–
Weekly expense	38	3	–
Annual expense	£.1,989	–	–
Contingencies:			
Clothing . . . . . £.448 13 –			
Stationery, printing, surgeon's account, expresses, secret service, &c. 200 – –			
	648	13	–
TOTAL EXPENDITURE for One Year . .	£.2,637	13	–

Since the date of the preceding return, the provisions of the police ordinance have been extended to the parishes in the neighbourhood of Quebec and Montreal, and a considerable increase of the force in both cities has been made owing to this extension and the disturbed state of the province.

The police, as an improvement upon the past, has generally afforded satisfaction, and in Quebec it has been very useful from the facilities it gave for the apprehension of runaway seamen. A testimony of its usefulness appears in the presentment of the grand jury at the last September session of the Court of King's Bench for the district of Quebec :—

'The grand jury have noticed with much satisfaction the great advantages experienced by the public in the recent establishment of the police in this city, on an improved system, under the authority of his Excellency the Governor-general, and strongly recommend an increase to the members of this useful description of force ; added to which, the grand jury respectfully recommend that public lamps be again fixed throughout the city,—a measure of great necessity to aid the efficiency of the police, and further to secure the peace and quietness of the inhabitants during the night.'

The recommendation of the grand jury respecting public lamps strikingly illustrates the neglect of the most ordinary accessaries to social comfort, security and decorum, occasioned by the want of appropriate local institutions. The Watch and Light Act expired in 1836, and as the law from which the Governor derived his powers deprived him of all authority in the matter of imposing any rate or tax, the recommenda-

tion of the grand jury was, in substance, a suggestion to his Excellency to defray the expense of lighting the streets of Quebec out of the provincial chest, the funds in which appear to be regarded in Lower Canada as a common stock, on which every class of exigents have a right to lay their hands before they have recourse to their own particular pockets. Previous to the passing of the Acts incorporating Quebec and Montreal, bills for establishing municipal government in these cities had been sent up by the House of Assembly to the Legislative Council, where they were rejected, on the plea that they contained provisions calculated to promote private interests to the prejudice of the public. The bills which eventually received the sanction of the provincial legislature might, we conceive, have been justly rejected, for reasons in the main not dissimilar. In the first place, their temporary character had a tendency to lessen the respect due to the authority they were intended to create, that authority itself being necessarily incompetent to mature and work out any comprehensive plan of improvement. In the next place, their provisions, as regarded the municipal franchise and the distribution of the wards, had the inevitable effect of giving a lasting and undue preponderance in the town councils to the representatives of a favoured class, namely, the Franco-Canadians. It happened, accordingly, that, among the twenty councillors allotted to Quebec, four was the average number of members of British blood. The officers appointed by the corporation were of French extraction, and the corporate records were kept in the French language. There was about the same proportion of members of British origin in the Montreal town council as in that of Quebec, and the corporate officers were similarly selected. Thus, in two cities dependent for their prosperity on commerce, that portion of the community who were at the head of all commercial undertakings were, by a partial franchise, and an unfair sectional arrangement, thrown into a hopeless minority in the local administrative bodies. Nor do we find that their exclusion was compensated by the superior trustworthiness of those who constituted the majority. In Montreal, the choice, for one year at least, was unfortunate. In the list of councillors elected in June 1835 (for the last year of incorporation) are the names of Dr. Robert Nelson, Messrs. E. E. Rodier, John M'Donnell, L. H. Lafontaine, J. Donegani, and Dr. Lusignan; all of whom are now in prison or in exile, in consequence of being engaged in treasonable practices, or implicated in aiding and abetting them.

Besides their temporary and exclusive character, there were other and vital defects in the Acts incorporating Quebec and Montreal. They invested the town councils with a very imperfect share of municipal attributes. These bodies had, in fact, hardly any substantial authority beyond the superintendence of streets, and, even in that department, they were controlled by a special Road Act of 1799. A section of the meagre statutes of incorporation is devoted to a summary of the moral obligations incident to the discharge of the mayoralty: 'The mayor to be vigilant and active in causing the laws for the government of the city to be respected,' &c. Through what description of agency the city functionary's vigilance was to be exerted, we are left to surmise, for he who, by virtue of his office, is chief magistrate in the corporate towns of Great Britain and the United States, was in the incorporated cities of Lower Canada no magistrate at all. And if the administrative powers conferred upon the corporations were little, the resources at their disposal were less. The average yearly revenue of the city of Quebec for five years was 5,500*l.*, a sum which, with strict economy, would barely suffice to pay the corporate officers, and maintain an efficient constabulary police.

Partial in the distribution of electoral privileges; crippled by the Road Act, the Watch and Light Act, and other laws for municipal purposes; obliged to await the tardy sanction of the superior courts to their bye-laws and internal regulations; destitute of funds adequate to the proper accomplishment of the objects within the limited circle of their administration; the corporations of Quebec and Montreal passed through the term of their brief existence, leaving with the public no memorial of their usefulness, nor any general anxiety for their revival.* Sir George Gipps could hardly have examined this halting attempt at municipal government, when he expressed the opinion, 'that if the chief magistrates of Quebec and Montreal, after their completion of the terms of their service, were to become, of right, legislative councillors for an equal term, it would add to the popularity of the legislative councillors'.

* It is stated, that an Act for continuing the incorporation of Montreal was thrown out by the House of Assembly, because a provision had been inserted in it by the Legislative Council, conferring the municipal franchise upon tenants as well as proprietors.

ABSTRACT OF THE ACTS FOR INCORPORATING QUEBEC AND MONTREAL.

Quebec.

By the Provincial Act 1 Will. 4, c. 52, Quebec was incorporated and divided into 10 wards; each ward to return two members to the common council; nine of the 20 councillors thus returned to constitute a *quorum*, of which the mayor always to be considered one.

Electoral Qualification.

The right of voting for the ward in which he resided, conferred upon every male inhabitant, being a resident in the city for 12 months preceding the election, and proprietor of a house, with the ground on which it is built and paying assessment.*

In cases of objection to voters, the party tendering the vote to swear to his qualification.

Qualification of Councillors.—The possession as proprietor of real property to the yearly value of 25*l.* currency (amounting to 22*l.* 4*s.* 8*d.* sterling), clear of all incumbrances, and over and above all rents and charges affecting the same (said property being in the ward for which the return is made); with residence in the city for two years previous to the election.

Election of Councillors.—The annual election to be holden on the first Monday in June; poll to open at 10 in the morning, and close at four in the afternoon. The election not to occupy more than two successive days, unless Sundays and holidays (*fêtes d'obligation*) should intervene. Justices of the peace to preside at the first elections under the Act; at all subsequent elections, the councillors for the time being in their respective wards.

One-half of the council to retire in annual rotation. At the close of the first year under the Act, the councillors for the several wards to determine the order of their retirement by lot or ballot.

* Assessment is levied under the road law, which provides, 'That no lot of ground which (together with the houses and buildings thereon erected) does not exceed the annual value of 5*l.* currency, and no lots, houses or buildings occupied by religious communities of women, and no grounds without the fortification walls of the said cities respectively used for pasture, hay-land, or for raising grain, shall be assessed under this Act.' No other description of property is exempted. 'The Canadians,' says Laterriere, in his Political and Historical Account of Lower Canada, 'with hardly an exception, are proprietors of land.' Not so the commercial classes of British origin resident in the towns.

Persons refusing to serve liable to a penalty of 25*l.* currency. No councillor obliged to serve for more than four successive years. Exemptions may be claimed by certain public officers and members of learned professions.

Oath of Office.—Councillors sworn to perform and execute their duty according to the intent and meaning of the Act.

The Mayor.—To be elected annually by and from the council, and to be allowed a salary not exceeding 100*l.* per annum.—*Chief executive officer of the corporation and president of the council*, which may, in his absence, choose a temporary chairman. Empowered to call extraordinary meetings of council.* Instructed 'to be vigilant and active in causing the laws for the government of the city to be enforced, to inspect the conduct of all subordinate municipal officers, and, so far as in his power, to cause all neglect or violation of duty to be prosecuted and punished'. Also instructed to communicate to the council such information and recommend such measures 'as may tend to the improvement of the finances, the police, health, security, cleanliness, comfort and advancement of the town'.

Proceedings and Powers of Council.

Proceedings to be public 'with regard to all the members of the incorporation'.

A statement of revenue and expenditure to be published at least once a year, in one or more of the French and English newspapers of the city.

The council to appoint such officers as to it may seem expedient, and allow them a just and reasonable remuneration. The treasurer to give security, and all the corporate officers to render their accounts as often as required by the council.

Council to have the powers which, before the passing of the Act, were vested in the justices of the peace (resident in the city) for making police regulations, receiving and employing the monies raised by assessments or otherwise, and over and concerning all streets, lanes, roads, causeways, pavements, bridges, embankments, water-courses, sewers, market-places public squares, and all other improvements within the city; the making and repairing of all market-houses and weigh-houses in the different markets, watching and lighting, and,

* The Act made no provision for meetings of council at certain fixed periods.

generally, over all things which might in any way regard the improvement and convenience of the city.*

Council to have possession of all monies raised by assessment or otherwise, the funds appropriated for watching and lighting the city, and all the immovable property and outstanding debts formerly under the control of the justices of the peace, with all registers, books of assessment and other documents belonging to or concerning the city.

Council empowered to make bye-laws, 'such laws not being repugnant to the laws and constitution of the province,' with the proviso that no bye-law shall have effect unless made by a majority of the whole council, and confirmed by the Court of King's Bench. Bye-laws not to impose any fine or penalty exceeding the sum of 5*l.* currency.

Fines, penalties and forfeitures recoverable in a summary manner before any two justices of the peace for the district, in weekly sessions; one moiety of such fines and forfeitures to go to the informer, the other to the corporate fund.

Council empowered to purchase ground for opening new streets, squares and market-places, or improving those already opened; also to borrow money and to issue transferable and redeemable bonds for the same, bearing interest not exceeding six per cent. The sums borrowed not to exceed at any time 'one moiety of the net proceeds of the revenue raised by assessment or otherwise' for city purposes during the preceding year.

The powers vested in the corporation not to interfere with the powers granted by law to the Trinity-house in respect of the port and harbour of Quebec.

Montreal.

By the Act of Incorporation, 1 Will. 4, c. 54, the city was divided into eight wards, each returning two members to the council. Seven to be a quorum; the mayor always to be one.

The Act restrained the corporation from interfering with the powers of the Montreal Trinity-house (since merged in that of Quebec), the wharves and slips erected or being erected by the commissioners for improving and enlarging the harbour of the city, and the wharves and grounds under the direction of the commissioners for superintending and

* The municipal powers withdrawn by the Act from the resident justices became re-invested in them after the Act had expired. Thus two important towns were shuttle-cocked between different forms of local government in the short space of three years.

enlarging the Lachine Canal. With the exception of these purely local provisions, the Montreal Statute of Incorporation is similar to that of Quebec.

Municipal Officers.

Mr. Longevin, formerly town clerk of Quebec, has furnished the following list of municipal officers for that city during the period of its incorporation, distinguishing those appointed by the council and those appointed by the Crown. With some immaterial differences, the return will also apply to Montreal.

Officers appointed by the Crown.

Health Officer.—Chief duty, inspecting vessels, their crews and passengers.

Road Surveyor.—Duties prescribed by Road and Police Acts.

Inspector of Flour.

Inspector of Pot and Pearl Ashes.

Inspector of Chimneys.—The duty performed in 1833, by an officer chosen by a society constituted under a temporary Act, and confirmed by the Common Council. After the expiry of the said Act, the duty performed by the officer originally appointed by the Crown.

Inspector of Weights and Measures.

Clerks of Markets.

Superintendent of Watch and Light, and his Deputy, under a provincial Act since expired.

Clerks of the Peace; High Constable.—'District' officers.

Harbour Master and Superintendent of the *Cul-de-sac*.—Appointed by the Crown, but acting under the direction of the Quebec Trinity-house.

Officers appointed by the Common Council.

Mayor.

Town Clerk.—(This office was not filled by a lawyer.)

Road Treasurer.—Acting as treasurer to the corporation.

Law Adviser.—None appointed in 1835.

Notary.

Clerks of Markets.—Two for new markets opened during the period of incorporation, but not recognized by the Crown.

Inspector of Beaches.—Under a temporary Act, now expired.

Corporation Wardens.—Six; for enforcing sanatory and other regulations; and inspecting streets and public works.

To the foregoing list may be added,

The Assessors of the City Rate.—There are five, who serve gratuitously, and are selected by the magistrates out of a list of 15, presented annually by the grand jury at quarter sessions. Parties assessed have the right of appeal to the justices at quarter sessions.

Public Buildings.

No town-hall or other building for corporate uses in Quebec or Montreal. The Quebec Council held its sittings in a house rented for the purpose. The Montreal Council met in a room in the court-house, by permission of the justices.

Revenue.

The sources of corporate revenue in both cities were—

Assessment on real estate.
Tax on horses.
Poll-tax, being composition for statute labour.
Tavern and other licenses.
Markets and stalls.
Municipal property.
Fines, penalties and forfeitures.
Subscriptions from parties desirous of improvements.

Quebec.

By a rather complex statement from the road treasury, Quebec, it appears that the amount of revenue raised in the city from the 1st of January 1833 to the 31st of December 1837, was 27,505*l.* 13*s.* 6*d.*

The expenditure during the same period was 27,879*l.* 9*s.* 10*d.* Of this expenditure, the charge under the head of salaries to officers is 4,362*l.* 9*s.* 3*d.*

Amount of debt owing by the city, up to September 1838, 1,992*l.* 4*s.* 3*d.*, being money expended in the purchase of ground for opening and prolonging streets, and in the construction of wharves in the St. Paul's-street market.

Amount of unpaid assessment, and rent of stalls for the year 1837, 137*l.* 16*s.* 5*d.*

Montreal.

I. Total amount of city revenue from the 1st of January 1833 to the 1st of December 1837, 31,406*l.* 5*s.* 2*d.*

II. The road treasurer's statement shows the proportions in which the various sources of revenue contributed to the city fund.

STATEMENT showing the various Sources of the ANNUAL REVENUE of *Montreal*, for the Years 1833, 1834, 1835, 1836, 1837.

	1833.	1834.	1835.	1836.	1837.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.
Assessment on property	2,908 – –	3,649 1 6	3,511 3 9	4,048 4 10	3,879 16 6
Tax on horses . . .	327 15 –	307 2 6	337 2 6	371 5 –	315 – –
Statute labour money .	152 10 –	144 2 6	186 12 6	162 15 –	87 2 6
Tavern-keepers . . .	32 – –	318 – –	382 – –	412 – –	508 – –
Grocers	– – –	292 – –	284 – –	268 – –	168 – –
Rent of butchers' stalls	247 17 6	481 16 8	395 14 –	373 5 –	396 – –
Clerk of the markets .	131 7 4	213 10 2	203 19 7½	203 18 4½	239 17 1
Rent of municipal property.	– – –	82 – –	91 5 –	88 5 –	86 10 –
Fines	86 2 6	39 – –	39 12 6	23 15 –	58 17 6
Arrears collected . .	142 19 –	89 3 6	250 9 6	58 6 –	14 15 –
Balance in hand . . .	– – –	– – –	170 17 1	144 – 3½	1,149 – 9½
Loan of money . . .	1,000 – –	500 – –		1,007 12 11	200 – –
Sale of old materials .	– – –	– – –	2 7 6	26 6 3	
Amount of public subscription.	– – –	100 – –			
Waterworks company, in lieu of repairing streets.		16 7 6			
£.	5,028 11 4	6,232 4 4	5,855 3 11½	7,187 6 2[a]	7,102 19 4½

III. Amount of expenditure from 1st January 1833 to 31st December 1837, 29,311*l.* 19*s.* 9*d.*

IV. CLAIMS against the City of *Montreal* up to 31 August 1838.

	£. s. d.		
John Bowers * . . .	500 – –	with interest .	from 4 August 1835.
Fabrique of Montreal †	750 – –	without interest	from 26 April 1836.
Hon. John Molson ‡ .	5,250 – –	with interest .	from 20 April 1836.
Hon. Pierre de Rocheblave.	120 – –	ditto	from 2 June 1838.
Augustin Tulloch . .	120 – –	ditto	ditto
Moses Hayes	79 – 6	without interest.	
Henry Jackson . . .	44 6 6	ditto	
Montreal and People's banks	1,500 – –	with interest .	10 August 1838.
Thomas Philipps . . .	75 – –		
£.	8,438 7 –		

* This loan of money was contracted under the sign manual of the mayor and seal of the city corporation. The creditor has not required the amount, but only the interest, which has been annually paid to him.

† One instalment of 100*l.* has been paid for the year 1837.

‡ This debt was contracted under and by virtue of 6 Will. 4, c. 7.

[a] *Sic* in Blue Book. [ED.]

MUNICIPAL DIVISIONS.

Quebec.

Of the ten wards into which the city was divided, four were allotted by the Act of incorporation to the Upper Town, two to the Lower, and four to the suburbs.

Montreal.

To the city proper were allotted two wards; to the suburbs, six; returning 16 members, less by four than Quebec, which is inferior to Montreal in wealth and population.

In this distribution of wards no sound governing principle is discernible; nor, indeed, principle of any kind. Had aggregate population formed the basis of the division, the Upper Town of Quebec would have had a smaller, and the Lower Town a larger share of the municipal representation; for according to the returns of 1825, the population of the latter was 4,187, and of the former, 4,445. That the influence of property was not regarded in the warding of the cities will be seen by referring to the assessments for the several divisions of each.

General View of the Assessments for each Section of the City of *Quebec* in 1837.

Wards in each Section.	*Section.*	*Men, at 2s. 6d.*	*Horses, at 7s. 6d.*	*Real Estate, at 2½ per Cent. on Annual Value.*	*Total.*
		£. s. d.	£. s. d.	£. s. d.	£. s. d.
Two Wards	St. John and St. Louis suburbs.	101 12 6	95 12 6	230 5 6	427 10 6
Two Wards	St. Roch and St. Vallier suburbs.	75 2 6	78 15 –	319 1 –	472 18 6
Two Wards	Lower Town .	89 10 –	15 – –	955 8 6	1,059 18 6
Four Wards	Upper Town .	67 2 6	55 17 6	999 – –	1,122 – –
	Grand Totals . £.	333 7 6	245 5 –	2,503 15 –	3,082 7 6

Mr. Molson having experienced some difficulty relating to the payment, has instituted a law-suit against the magistrates, which was pending in court at the date of the return.

The various sums due to the above-mentioned claimants were expended in enlarging the new market, tunnelling the little river, and improving the streets.

Of this assessment, the amount actually contributed in 1837, from each section, was—

	£	s.	d.
From St. John and St. Louis suburbs . . .	395	5	–
„ St. Roch and St. Vallier suburbs . .	451	10	3
„ Lower Town	1,031	3	6
„ Upper Town	1,111	7	6
Excess of city contribution over suburbs	1,295	15	9
Excess of Lower Town contribution, alone, over suburbs	184	7	9

The Montreal 'assessment' for the year 1837 amounted to 4,801*l.* 4*s.* of which 4,281*l.* 19*s.* was actually collected in the subjoined proportions from each section of the town.

ACTUAL CONTRIBUTION from each Section of the City of *Montreal*, on the Assessment of 1837.

Section.	*Men, at 2s. 6d.*			*Horses, at 7s. 6d.*			*Real Estate, at 2½ per Cent. on Annual Value.*			*Total.*		
	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.
City Proper { East Ward .	20	10	–	33	15	–	1,177	14	6	1,231	19	6
City Proper { West Ward .	20	2	6	27	15	–	977	6	–	1,025	3	6
St. Lawrence „ .	8	12	6	49	10	–	394	17	6	453	–	–
St. Antoine „ .	2	5	–	27	15	–	165	6	–	195	6	–
St. Louis „ .	14	5	–	41	12	6	260	11	6	316	9	–
St. Mary „ .	15	–	–	48	15	–	252	12	6	316	7	6
St. Anne „ .	2	7	6	39	7	6	346	6	–	388	1	–
St. Joseph „ .	4	–	–	46	10	–	305	2	6	355	12	6
GRAND TOTALS . £.	87	2	6	315	–	–	3,879	16	6	4,281	19	–
City Proper . .	40	12	6	61	10	–	2,155	–	6	2,257	3	–
Suburbs . . .	46	10	–	253	10	–	1,724	16	–	2,024	16	–
Excess of City Contributions over Suburbs . . . £.										232	7	–

The inferiority of the assessment on real estate in the suburban divisions, as compared with the main part of the cities, clearly establishes the fact, that in apportioning municipal representatives to the different sections of Quebec and Montreal, the Canadian legislature did not proceed upon the basis of property; nor assuming that the proprietorial qualification was a sound and liberal one, instead of being partial and narrow, does it appear that the plan of warding adopted in Quebec was justified by the number of qualified voters in each ward.

We learn from the assessment books that the number of rated proprietors of houses and lots in the Upper Town of Quebec is 221; in the Lower Town, 265; in St. John and

St. Louis suburbs, 343; in St. Roch and St. Vallier suburbs, 473. Now, had the distribution of the wards been regulated by the number of assessed proprietors, the suburbs would have formed at least six out of the ten, while the Upper Town, even had the wards been increased to twelve, would not have been entitled to more than two, under the same standard of qualification.

Unable, then, to discover any guiding principle in the warding of Quebec and Montreal, it is difficult to resist the conviction, that the comparatively small share of representative influence given to the Lower Town of Quebec and the City Proper of Montreal, where trade is chiefly centred, and where the commercial interest prevails, originated in a feeling hostile to the British population on the part of the House of Assembly, or of those who were instrumental in passing the measure of incorporation through that House. In consequence of aggrandizing the Upper Town at the expense of the Lower, the four wards in the former contained only a mockery of popular constituencies. The assessment books show that the whole of the proprietors qualified to vote for the city council amount to about 1,302; of which 816 belong to the poorer suburban population: after deducting from the remaining 486 the 265 Lower Town electors to be distributed between two wards, there is left for each of the Upper Town wards an average electoral body of 55 and a fraction,—a constituency little better than a close club.

QUALIFICATION OF ELECTORS.

Capital and population are the wants of a colony like Lower Canada, and it must be the object of an enlightened policy to encourage their introduction by an ungrudging participation in the rights of citizenship. In the towns, especially, every inducement should be given to the settlement of wealthy, enterprising and industrious strangers. The municipal franchise selected by the Canadian legislature was calculated to have an effect directly the reverse, inasmuch as, being vested exclusively in the possessors of real estate, it conferred a monopoly of local influence on the old race of settlers to the prejudice of the new; and this too, in places depending on trade for their prosperity, and where the commercial classes have always been recruited from without. It is hard to believe that the House of Assembly had any other motive in fixing the municipal franchise than the desire to secure the ascendancy to the Franco-Canadians.*

* In Upper Canada, Toronto has been successfully incorporated, and the municipal franchise of that city is, by the Act of Incorporation, vested 'in

By the Constitutional Act, the privilege of voting for members of the House of Assembly itself was extended to the occupiers of houses paying a yearly rent of 10*l.* sterling, yet the very same class of tenants, who were chiefly British, were deprived by the legislature which this Act created, of a voice in the municipal elections. And that the municipal franchise adopted by the provincial legislature afforded no correct test of the degree of individual or sectional interest in the judicious management of city affairs is evident from the assessment returns, which show that 816 suburban proprietors of Quebec, having eight representatives in the council, did not contribute so much annually to the corporate fund, by 184*l.* 7*s.* 9*d.*, as did the 265 Lower Town proprietors, having no more than four representatives.

Poor and ignorant Canadians are the proprietors of houses and lots, of which the yearly assessment value would rarely be less than 6*l.*; and while the proprietorial franchise tended to give such persons an undue influence in the urban government of the province, it had the effect of excluding persons of wealth and intelligence; the very best depositaries of colonial municipal power. Nor can the authors of this invidious and deceptive franchise uphold it on the score of its popular operation. Had the possession of the electoral right been conceded to the single class of occupiers of houses assessed at the annual value of 10*l.* sterling, it would have been more extensively as well as more equitably distributed. Take, for example, the comparative amount of proprietors and occupiers of houses assessed as before in the city of Quebec.

Section.	*Proprietors.*	*Occupiers.*	*Increase and Diminution.*
St. John and St. Louis suburbs	343	182	Less by 161.
St. Roch and St. Vallier suburbs	473	300	„ 173.
Lower Town	265	489	More by 224.
Upper Town	221	510	„ 289.
TOTALS . .	1,302	1,481	More by 179.

such male inhabitant freeholders within the ward for which the elections shall be holden, or the liberties thereof, as shall be possessed at the time of the election, either in freehold or as *tenant for a term of years, or from year to year*, of a town lot or dwelling-house within the said ward or liberties: Provided always, that a portion of a house in which any inhabitant shall reside as a householder, and not as a boarder or lodger, and having a distinct communication with the street by an outer door, shall be considered a dwelling-house within the meaning of this clause.' By a subsequent Act (7 Will. 4, s. 39), the franchise was altered, and the right of voting restricted to possessors, either in freehold, or as tenants for a term of years, or from year to year, of a town lot or dwelling-house rated at the yearly value of *ten pounds*.

Thus it appears, that by conferring municipal electoral rights on this class of substantial occupiers, in preference to assessed proprietors, the constituency of Quebec (which would be open to constant increase by new settlers) would at once receive an addition of 179 voters. But this is not all: it will be found, on referring to the assessment returns, that the substitution of occupiers for proprietors would bring the electoral strength of the municipal divisions into limits proportionate to their respective sectional contributions to the local revenue. St. Louis and St. John suburbs, which contribute the least amount, would have fewest qualified voters, and of course ought to have fewest wards. The Upper Town, which pays the largest assessment, would furnish the most numerous constituency; and the remaining divisions, according to their proportion of the public burthens, would obtain their share of influence. By a new and just municipal division, the number of wards should be so limited as to ensure constituencies large enough to make what might deserve to be entitled a popular choice, and at the same time afford their due weight and influence to the heaviest tax-payers.

In the city of Montreal, the enlargement of the municipal constituency, by transferring the franchise from proprietors to the aforesaid class of occupiers, would be still more important than in Quebec.

Section.	*Proprietors.*	*Occupiers.*	*Increase and Diminution.*
East Ward	138	412	More by 274.
West Ward	93	365	„ 272.
St. Anne's Ward . . .	130	215	„ 85.
St. Joseph „ . . .	250	278	„ 28.
St. Antoine „ . . .	131	200	„ 69.
St. Lawrence „ . . .	296	435	„ 139.
St. Louis „ . . .	183	452	„ 269.
St. Mary „ . . .	232	402	„ 170.
TOTALS . . .	1,453	2,759	„ 1,306.

The constituency of Montreal would thus be nearly doubled, the greatest increase accruing to the east and west wards, which constitute the 'city proper', and pay a larger share of assessments than all the other wards combined, and are particularly devoted to the commerce on which the town depends for its prosperity.

QUALIFICATION OF MUNICIPAL COUNCILLORS.

For a seat in the House of Assembly or the Legislative Council, no qualification whatever was required by the Constitutional Act. By the provincial Act, 2 Will. 4, c. 22, the right of serving on grand juries of the superior courts was extended to occupiers of houses in Quebec and Montreal paying a yearly rent of 60*l*., as well as to the owners of real property producing an annual return of 25*l*. A like qualification, but to a less amount, was fixed by the same Act for the grand jurors at quarter sessions. By the Quebec and Montreal statutes of incorporation the qualification was restricted absolutely to the possession of real property to the yearly value of 22*l*. 10*s*. sterling, clear of all incumbrances.

There are two objections to this qualification; first, the impossibility of ascertaining whether it be actual or nominal; second, its tendency to exclude from the management of corporate affairs persons highly competent to conduct them with advantage, viz. those whose capital is embarked in trade.

Under the laws of the province there is no way of arriving at the knowledge of the incumbrances on real estate, so that an individual having ostensibly a 25*l*. property qualification, may, in fact, not be possessed of an annual income of 25 pence. The municipal representatives of Quebec and Montreal were not required to swear to their qualification.

Owing to the aforesaid defect in the provincial law, and to the unimproving and unstable system of general government, most of the British engaged in trade have been deterred from the purchase of real property, for lack of which they were inadmissible to the city councils, however wealthy, experienced or enlightened they might be. Nothing could be more short-sighted and illiberal than to frame laws for establishing municipal institutions in such a way as to give an undue preponderance to the class which was wholly unacquainted with the working of these institutions by excluding another class whose social training in the mother-country had made them familiar with their operation, their objects and their advantages. And why was a tenancy qualification, recognized with regard to grand jurors by the Canadian legislature overlooked with respect to the members of a municipal council?

MUNICIPAL PROPERTY.

Quebec.

The property vested in the corporation of Quebec was comprised of markets, St. Paul's wharf, and a small lot of ground opposite the custom-house, granted to the city by the Crown. The markets were established by provincial Acts; one for the Upper Town, one for the Lower (St. Paul's-street), and one for the St. Roch's suburbs. The last has not succeeded. There is also a hay-market.

The principal market is in the Upper Town. Mr. Thomas Atkins, clerk of the market, (who is also the inspector of weights and measures, at a yearly salary of 40*l.*), stated to the commissioners, that, in addition to his salary, he was entitled to weigh-house fees; but these had been reduced almost to nothing by a regulation which permits the buyer and seller, when both are consenting, to weigh commodities where they like. There are 18 stalls in the market, which let, on an average, at from two to five dollars a year each. They are let annually by auction. The revenue from them is diminished, owing to the great number of hucksters, who pay no rent, and only 5*s.* a year for license. These hucksters advance the price of almost every article for sale by forestalling. Mr. Atkins has recommended the magistrates to raise the charge of a huckster's license to 5*l.* yearly.

The chief business done in the St. Paul's market is the selling of hay, which has been removed thither from the Upper Town. The old hay-market does not, at present, yield any revenue; but the magistrates are said to entertain the intention of erecting new stalls upon it, which might be made to pay well.

The general returns from the Quebec markets might be considerably increased. A trifling income has been derived from St. Paul's wharf.

Montreal.

Besides markets, the corporation of Montreal had no property, save a common, containing about 40 acres; returning no revenue, but capable of being advantageously disposed of in lots.

Four markets, exclusive of a hay-market, have been established, under provincial Acts—the new market, St. Anne's, Pres de Ville and St. Lawrence markets. Little, if any, business is done, except in the new market and St. Anne's.

The new market belongs to the city, and is the most frequented. Its returns are good, in proportion to the original outlay and yearly expenditure.

St. Anne's market is under the management of trustees. According to a statement furnished by their treasurer, Mr. Thomas Blackwood, the claims against the trustees remaining unliquidated on the 1st of September 1838, amounted to . . . . . £.19,057 4 5

Viz. Money borrowed	£.13,776	13	4
Balance due to tradesmen for erecting the market-house, &c. .	773	6	4
Interest of money up to June 1838	4,507	4	9

Receipts for last Three Years :

	£.	s.	d.
From 1st July 1835 to 30th June 1836 . .	725	9	11
,, 1st July 1836 to 30th June 1837 . .	612	2	9
,, 1st July 1837 to 30th June 1838 . .	435	11	8

Expenditure for last Three Years :

From 1st July 1835 to 30th June 1836 . .	269	2	2
,, 1st July 1836 to 30th June 1837 . .	240	17	9
,, 1st July 1837 to 30th June 1838 . .	253	8	9

The officers of the market are secretary and treasurer (one person), at a yearly salary of 25*l.* ; clerk, at a reduced salary of 50*l.* ; and constable, at a reduced salary of 30*l.*

DIGEST OF EVIDENCE RESPECTING THE INCORPORATION OF THE CITIES OF QUEBEC AND MONTREAL.

Quebec.

Edward Glackemeyer, Esq., notary public, justice of the peace, and formerly a member of the Quebec common council, being examined, expressed the opinion, that the powers conferred upon the councils of the incorporated towns were too limited. With an inadequate revenue for effecting necessary local improvements, they were destitute of authority to raise an assessment. There was and is no public supply of water in Quebec, and the watch and light fund was insufficient for the proper accomplishments of the objects to which it was appropriated. The expenses of the fire department were defrayed out of the 'road money'. There was no municipal property, except the markets, a wharf, and a small lot of

ground, worth perhaps 1,000*l.* or 1,200*l.* All the wharves are private property, with the exception of the St. Paul's (city) wharf, and the King's; the latter is appropriated to the purposes of government. The Court of King's Bench delayed for six months the grant of its sanction to the market regulations framed by the Quebec common council. When the Act of Incorporation last expired, the same court refused to renew its sanction to these very regulations when applied to by the magistrates; and the markets came again under the old rules, which are unfit for the present state of society in the town.

It was desirable that there should be a comprehensive municipal administration, including, so far as might be reasonable, every institution of a municipal character, and invested with power to appoint all corporate officers, license public-houses, &c. &c.

A daily police court is much wanted for the summary trial of petty offences, and breaches of municipal law. At present it was sometimes difficult to procure an attendance of magistrates, those unacquainted with law having a disinclination to attend. For this, among other reasons, it was expedient that a paid professional chairman should be appointed to preside at quarter sessions.

A change might properly be made in the municipal franchise, by adopting the city franchise for the election of members of the House of Assembly. This alteration, by extending the right of voting to those tenants who paid a yearly rent of 10*l.* sterling, would increase the number of city electors in a larger proportion than the suburban. The possession of a yearly clear income of 25*l.*, arising out of real property, appeared to him a sufficient qualification for a common councillor, and he considered it just to exclude from the council all who were not possessors of a real property qualification.

A larger revenue might be obtained from the markets if the rules framed by the corporation were again in operation. The property of the *Cul-de-sac*, now vested in the Trinity house, and comparatively valueless, might, if transferred to a city corporation, be made productive. The wants of the public under municipal government ought to be provided for by a general assessment, when the funds raised by special rates proved insufficient. The existing mode of assessment might be improved, it being unequal, troublesome and expensive. An assessor was chosen yearly for each of the five divisions of the city, and the consequent inequality of assessment occasioned complaint and appeals to the magistrates. There ought to be paid assessors for rating the whole town

uniformly, and, instead of a yearly valuation, one in every five years might perhaps suffice.

The ferry from Quebec to Point Levi is an open one, and is under the jurisdiction of the Trinity-house. The only regulation respecting ferryage is a rule of the Trinity board, that the horse-boats shall start regularly every half hour.

Mr. Glackemeyer is of opinion that the Quebec corporation had generally afforded satisfaction to the public, until politics were introduced into the council. The affairs of the city would, he conceived, never be well regulated until they were again submitted to corporate control.

Ebenezer Baird, esq., merchant and a member of the late corporation of Quebec, did not think that the corporation had satisfied the inhabitants generally. There was, in fact, a continual outcry against it. Its character was injured and its usefulness impaired by the introduction of party politics. One instance to which he alluded was the uncalled-for introduction to the council by Mr. (now Judge) Bedard, of a letter from William Lyon M'Kenzie. In addition to the objection arising from its interference in politics, the corporation was imperfect in its powers, not possessing the prerogatives of an efficient municipal government. It had, for example, no police court peculiar to itself, nor any means for enforcing the summary payment of rates, such as are possessed by the corporation of Toronto.

The British population were not fairly represented in the council. This was partly owing to the partial provisions of the Act of Incorporation, and partly to the supineness of the British, who felt that they must, under such a law, always remain in a minority, and, therefore, did not greatly exert themselves to obtain admission into a body constituted with powers so inadequate. The municipal franchise was not an equitable one ; it operated more directly against the rights of the British, than the elective franchise for the House of Assembly. A uniform household qualification, say to the extent of 10*l.* sterling by the yearly assessment, would be preferable to a qualification based upon the possession of real property, which in the towns must tend to exclude new settlers and persons in trade from a share in the local government. The qualification of common councillors was too low to secure the services of respectable men ; it ought to be doubled, at least ; nor ought it to be confined to the ownership of real estate, which, in a colony under the French law of property, afforded no grounds of forming a correct estimate of an individual's worldly circumstances.

There was not sufficient funds at the disposal of the corporation, nor were the modes of assessment and appropriation the best that might have been devised. It would be better to appoint permanent assessors to value all the rateable property of the city at reasonable intervals,—for example, once in three years. There ought to be a general fund for corporate purposes, composed of the aggregate local contributions; and when a deficiency arose in providing for any useful object of expenditure, it should be supplied by a general equitable assessment. Certain taxes levied upon shops and taverns ought not to have been specially set apart for watching and lighting; nor ought the road money to have borne the expense of the fire department. As to payment of fair local taxes, people would not object to it if the extent of public accommodation bore a just proportion to the outlay.

In the event of the cities of Lower Canada being again incorporated, the town councils ought to have the control of the police, the fire department and other branches of municipal administration, and the corporate jurisdiction should be extended as far as high-water mark of the St. Lawrence.

The power of making bye-laws should be granted to the councils without imposing on them the necessity of awaiting the sanction of the Court of King's Bench. Corporations wisely constituted and invested with due authority would be of the greatest advantage to Quebec and Montreal.

Rene Edouard Caron, esq., advocate and mayor of Quebec during two years, considered the power of the late corporation too circumscribed, and its revenues too limited, for an efficient administration of city affairs. The road surveyor and some other officers performing corporate duties were appointed by the Crown, nor had the common council even the power of appointing the common constables. In case of the peace of the city being disturbed, the mayor had no more right to interfere than any other citizen.

The corporation was fettered by various municipal laws, all of which should be repealed if the cities are re-incorporated, and the powers conferred by these laws on insulated authorities, together with the appointment of all the municipal officers, should be given to the councils; which ought likewise to be empowered to frame bye-laws without reference to the Court of King's Bench or the executive. The corporate authority should not only be extended, but clearly defined, so as to prevent it clashing with the jurisdiction of the Trinity-house. Of course an increase of duty would call for a corresponding increase in the number of municipal councillors.

A daily police court would be of great utility, provided there were a paid professional magistrate (who might preside at quarter sessions) to sit with and assist such unpaid magistrates as might be in attendance. The mayor ought to be a magistrate *ex officio*, and be allowed a salary in proportion to his responsibility, labour and sacrifice of time. Unless a salary were given, it would be difficult to procure the services of qualified persons; there being but few who could afford to spare the time requisite for the discharge of the office.

Triennial assessment appeared to him objectionable, owing to the frequency of removal and the fluctuations in the value of property. As to the imposition of new taxes, it would probably be complained of at the outset, but the public would become reconciled to the burthen when it had been succeeded by improvements of obvious and general advantage.

With respect to the franchise, Mr. Caron would not object to confer it upon tenants who pay a yearly rent of 25*l.* and are assessed for municipal purposes, but he would oppose the admission of any to the town councils save those who possessed a qualification in real estate; and the former one he conceived to be high enough for a fair popular choice. According to his view, mere tenants, as their residence might be only temporary, would not have a sufficient interest in the welfare of the city. If they wished to enter the corporation, they might purchase property and stand upon the same footing as others.

John Malcolm Fraser, esq., merchant, and a common councillor of Quebec during the three years of its incorporation, was of opinion that the conduct of the council had not satisfied the inhabitants generally. A portion of the council consisted of men of strong prejudices and inferior education, and, of the educated members, some were violent political partisans. Their proceedings had at times been marked by the introduction of party politics, and the manifestation of an anti-British feeling. (Mr. Fraser alluded to the letter from W. L. M'Kenzie mentioned in the evidence of Mr. Baird, and to a quarrel that had occurred between the soldiers of the 79th regiment and some of the inhabitants of the suburbs, concerning which the corporation had thought proper to make certain representations, considered by the British objectionable in themselves, and irregular as regarded the legitimate exercise of corporate functions.)

Mr. Fraser concurred in the sentiments expressed by the gentlemen previously examined as to the insufficiency of the city revenue, the necessity of a complete and comprehensive system of municipal government, with the power of making

bye-laws subordinate only to the law of the land, and the establishment of a city police court for the summary trial of petty offences. He likewise deemed it expedient that a new measure of incorporation should include an impartial adaptation of the franchise to the capacities of the citizens for maintaining a sound local administration. A corporation so constituted would, he believed, prove of undoubted benefit to Quebec, and he felt assured that the respectable part of the inhabitants would not object to being called upon to contribute to its support.

L. T. Macpherson, esq., notary public, considered the Quebec corporation defective in its constitution, in consequence of more power having been given to those who formed the mass of the provincial population than they were capable of using for their own good. To the same cause might be attributed the failure of all the popular institutions of Lower Canada. Still the province stood in need of popular institutions; but, to secure their beneficial operation, the qualifications of the elector and the elected should be so clearly understood and so accurately defined, as to restrict the possession of power to those who were competent to exercise it for the welfare of the whole. In order to promote this desirable end, he suggested that in all Canadian elections, whether local or parliamentary, each duly qualified elector should only possess a single vote when more than one representative was to be chosen. The effect of this arrangement would be a more equal representation. He thought, also, that quorums, small in number, should be fixed by statute, so that the minority should not be deprived of the power of transacting business when the majority did not choose to attend. Were Quebec incorporated on such principles, it might, with safety to the Crown and advantage to the people, be endowed with all the powers and attributes common to British corporations. But he held it to be indispensably necessary that the Governor and Council should enact, and the Imperial Parliament render permanent, the primary laws for the happy government of the province; for laws of this stamp they could never expect to obtain from any popular provincial assembly. Extensive private interests would always have sufficient influence to thwart comprehensive measures, however conducive those measures might be to the public good. The prosperity of all British North America now depended upon the remedies to be devised and sanctioned by the British Parliament. At present, with advantages far exceeding those enjoyed by the people of an adjacent country, they saw their neighbours

advancing in improved institutions, arts and wealth, while they were poor, feeble and retrograding.

Montreal.

Jacques Viger, esq., mayor of Montreal during the whole period of its incorporation, then held and continues to hold the office of road surveyor for the city and parish of Montreal, in which capacity he was subject to the council, of which as mayor he was the head. A member of the council had on one occasion moved that Mr. Viger, as road surveyor, should report to Mr. Viger, as mayor, how he had discharged certain duties of his office.

Mr. Viger stated to the commissioners that little interest was taken in the municipal elections of Montreal. The British party probably made no efforts to gain admission into the council, as they could not hope to obtain a majority, else they might have succeeded in returning more members than they did. The powers of the corporation were too limited. It had no police authority, save over the night watch, which was altogether impotent for the due protection of the town. The city was badly lighted, although a yearly sum of 800*l.* had been expended for that purpose.

The Montreal gas company offered to supply double the quantity of public lights for the same sum, but the expiry of the Act of Incorporation prevented an arrangement. Had the Act been renewed, the council would have applied to the legislature for power to conclude an arrangement with the company. Since the demise of the corporation in 1836, nothing has been done for lighting the city, as the magistrates have no funds to meet the outlay.

A corporation to be effective for good should have powers more extensive than the former one. The mayor and a certain number of councillors ought to be justices of the peace, *ex officio*. All matters of common interest to the citizens should be placed under the management of the corporation, and it should possess the unfettered right of making bye-laws. It might be advisable to give the council the power of appointing paid assessors. There being five assessors for the city acting independently of each other, there are occasional complaints of inequality of assessment. The object of an assessment on real property is to keep up the roads ; but the rate of sixpence in the pound is not sufficient to maintain good roads in Montreal. The city applied, at one time, to the House of Assembly for a grant of 1,000*l.* in aid of the road funds. During the worst part of the year, from the 15th of

November to the 1st of May, the duty of sweeping the streets and clearing off the accumulations of snow and rubbish in front of the houses, devolves upon the citizens, who are liable to a fine for neglect.

Mr. Viger saw nothing objectionable in granting the municipal franchise to occupiers of houses fairly assessed for municipal purposes. A 25*l.* real property qualification seemed to him sufficient for a common councillor; but persons might be justly eligible who paid a rent equivalent, as a test of property, to the qualification of real estate.

The inhabitants of towns would not complain of a larger assessment, provided the money were applied to objects of general and acknowledged utility.

The introduction of additional testimony would not throw more light upon the working of the corporate system in Quebec and Montreal. With reference to the latter city it may be remarked, that the corporation satisfied the majority of the French Canadians, so far as its administration of affairs was concerned, while by the British it was regarded with strong dislike.

MINOR INCORPORATIONS OF QUEBEC AND MONTREAL.

Quebec Trinity-house.

By the permanent Provincial Act 45 Geo. 3, c. 12, the corporation of the Trinity-house was erected for 'the better regulating of pilots and shipping in the port of Quebec, and in the harbours of Quebec and Montreal, and for improving the navigation of the river Saint Lawrence, and for establishing a fund for decayed pilots, their widows and children.'

The Trinity Board, which is chiefly composed of respectable merchants, consists of a master, deputy-master and five wardens. The officers of the corporation are a registrar and treasurer (one person), harbour-master (one of the wardens), assistant harbour-master and superintendent of the *Cul-de-sac* (one person), superintendent of pilots (a warden), and a water-bailiff. The members of the board, as well as the officers, are nominated by the Crown.

The corporation is empowered to make bye-laws and enact penalties for the breach thereof, the fines exacted for violation of pilot regulations going to the pilot charity fund; of the remainder, one moiety goes to the informer and the other to the provincial chest. The first bye-laws were issued in 1805,

under the sanction of the then Lieutenant-governor of the province, Sir R. S. Milnes.

Open courts for the transaction of business are held on Tuesdays and Fridays. Summons is served by the water-bailiff. Charges against pilots are directed by their superintendent; prosecutions for all other infringements of Trinity-house bye-laws are conducted by the harbour-master. During the period of the year when the St. Lawrence is open to navigation, the board is a good deal occupied in hearing complaints.

The corporation has a police jurisdiction over wharves and landing-places, for the removal of nuisances and the prevention of accidents to shipping by fire. It has, however, no constabulary force for securing the observance of its regulations. It is the duty of the water-bailiff to enforce the rules of the board at the Lower Town landing-place.

Mr. E. B. Lindsay, registrar and treasurer to the corporation, states that it has for some time experienced a deficiency of funds. Application was made to the House of Assembly for an Act to authorize the levying of a small tonnage duty, to which no opposition would have been offered by the commercial interest; but, owing to the political excitement which prevailed, no attention was paid to the matter.

Montreal Trinity-house.

The Act which erected the Quebec Trinity-house, empowered the corporation to establish a branch at Montreal, which was done accordingly; and this arrangement continued in force until the passing of the Provincial Act, 2 Will. 4, c. 24, which erected an independent Trinity-house in Montreal, the boundary of the jurisdiction of the two houses being Pointe du Lac, about nine miles above Three Rivers. The latter, a temporary Act, expired in May 1837, and the government of the river has reverted to its former position.

According to Mr. J. Viger's evidence concerning the Montreal municipal corporation, the separate jurisdiction over the beaches and wharves, vested in the Trinity-house and the harbour commissioners, occasioned inconvenience by clashing with the city authority.

Montreal Harbour Commissioners.

Authority was given to the commissioners appointed under the Provincial Act, 10 & 11 Geo. 4, c. 28, to borrow money to be expended in enlarging and improving the harbour of

Montreal. By subsequent enactments the authority of the commissioners was enlarged. The amount of receipt and expenditure, together with all necessary vouchers, are forwarded annually to the receiver-general of the province.

The general state of affairs is explained by Mr. Badgeley, secretary to the harbour commissioners, in the following communication, bearing date Montreal, 4th September 1838.

'I have the honour to transmit herewith copies of the following account of receipt and expenditure, viz. :—

	Dated 31st December 1833
	,, 31st December 1834
	,, 26th October 1835
	,, 20th September 1836
For 1837 .	,, 21st February 1838

'Also the following statements made up from the above and those of the preceding year, viz. :—

	£.	s.	d.
Amount of three loans authorized by Act of the provincial legislature, with a detail of the certificates granted to the lenders for their respective sums, and the annual interest accruing thereon	35,000	–	–
Amount of incidental expenses advanced by the provincial government, closing with the year 1837	630	17	6
Amount of warrants granted by the government in advance to pay the annual interest to the holders of the (loan) debentures, &c. . .	7,006	4	2

'From which latter sum of 7,006*l.* 4*s.* 2*d.* is to be deducted the amount of wharfages collected for the years 1835, 1836, 1837, which did not pass through the hands of the commissioners, nor was any account thereof furnished to them; but the collector of the harbour dues was directed to transmit the sum in question to the receiver-general at Quebec, which mode still continues.

'Amount of interest paid to the holders of debentures from the commencement until the 5th of July 1837 (exclusive of 52*l.* 12*s.* 6*d.* unclaimed), from which is deducted the amount of wharfages received by the commissioners for the years 1832, 1833, and 1834, being 3,903*l.* 2*s.*, leaving a balance of 7,006*l.* 4*s.* 2*d.* advanced by the government, and corresponding to the sum stated in the account of government warrants.

The stopping of the improvements with the close of the year 1832 has materially affected the harbour revenues, rendering them inadequate to meet the interest on the money expended; as during the summer months many of the masters evade paying the dues by taking their vessels to the upper part of the harbour (beyond the wharves, where they do not incur the charge of wharfage), and which, at that season, notwithstanding its inconvenience, is accessible for commercial purposes. The result of the statement shows :—

	£.	s.	d.	
The debt to individuals bearing interest is	35,000	–	–	currency.
The debt to the Government in advance for incidental expenses .	630	17	6	
To the Government in advance, on payment of interest . . .	7,006	4	2	

The last subject to the deduction of wharfage for 1835, 1836 and 1837, as already specified.

'You will please to observe, that the commissioners have to account for two farther warrants for 952*l.* 17*s.* 6*d.* each; the one on the 31st January, and the other on the 18th July last, from which, deducting 5*s.* 3*d.* paid for the fees on the two warrants, make 1,905*l.* 10*s.* currency, to pay the interest for one year to the 5th July last; this sum, with the expenditure of the present season for the works now in progress, will be accounted for in the annual statement to be furnished at the usual period.'

Until the works are completed, which will probably be in the course of the ensuing year, no correct estimate can be made of the revenue to be derived from the harbour of Montreal. In the opinion of experienced commercial men, the rates of wharfage, at present uselessly low, might be quadrupled, without detriment to the port.

Montreal Gas Company.

The Act 6 Will. 4, c. 18, which incorporated the company, provides, that the gas-works shall at all times be visited and inspected by the municipal authorities of the city or their deputies, all of whose just and reasonable orders shall be obeyed by the company's servants, under a penalty of not more than 5*l.*, nor less than 2*l.* 10*s.* currency.

This provision was probably introduced under the anticipation that the public lighting of the city would have been

intrusted to the company. In the absence of such an arrangement, the company is obliged to place a higher price on the gas supplied to individual consumers, by whom the increased rate of charge is very sensibly felt.

Montreal Water Company.

The affairs of this company have passed into the hands of a small number of private speculators, who, it is said, give satisfaction to the public; at all events the supply of water is good.

TOWN OF THREE RIVERS.

The local government of Three Rivers is administered by the unpaid magistracy, who hold weekly sessions, and frame such police regulations as they deem necessary. But destitute as the magistrates are of the funds requisite for giving even due publicity to their regulations, they are quite incapable of enforcing them. No police, worthy of the name, is maintained in the town, and its inhabitants suffer accordingly from the influx of bad characters, who, expelled from Quebec and Montreal, resort to Three Rivers.

There are two market-places in the borough, one of which only is in use. These, with a common about 500 acres in extent, under the management of a corporate body chosen by the inhabitants, and which is productive of some revenue, comprise the whole of the town property. Local improvements are provided for by voluntary subscription.

The municipal officers of Three Rivers are, a high constable (of the district), an inspector of weights and measures, and an inspector of chimneys. The last two offices are held by the same person.

There, as elsewhere, stipendiary magistrates are required. The unpaid magistrates, engaged in their private affairs, are difficult of access; and as the same persons rarely occupy the bench on consecutive days, the public are exposed to the evils of contradictory decisions.

Owing to a provision of the road law, which forbids entrance into gardens, orchards, &c. without the consent of the proprietor, the district grand-voyer is unable to act in such places as Three Rivers, and the improvement of the streets is consequently neglected.

TOWN OF THREE RIVERS :—ORDINANCES AND STATUTES.

Subject.	*Vol.*	*Page.*	*Year.*	*Reign.*	*Chap.*	*Remarks.*
Accidents by fire	Ord.	33	17	Geo. 3	13	Provides against the same in Three Rivers, Quebec and Montreal.
,, . .	,,	189	30	,,	7	Amends foregoing ordinance.
,, . .	13	94	3	Will. 4	25	Establishes fire society in the same suspending, so far, the two ordinance till 1st May 1838. *N.B.*—Since 1st May 1838, sus pended ordinance again in force.
Police . .	9	86	57	Geo. 3	16	Provides for regulation of police i Three Rivers, Quebec and Montreal former Acts having expired on 1s May 1816.
Common. .	3	62	41	,,	11	Authorizes inhabitants to regulate concede, &c. &c., common.
,, . .	4	176	46	,,	7	Remedies informality in carrying fore going Act into effect.
,, . .	9	38	57	,,	8	Extends provisions of 41 Geo. 3, c. 11 to surveying and defining of the same
,, . .	11	324	6	Geo. 4	24	Extends power of conceding, and give power of acquiring portion of jesuit estates.
Markets . .	10	668	4	,,	29	Establishes two markets.
Wharfingers .	13	508	2	Will. 4	32	Compels them to advertise unclaime goods till 1st May 1834. Continued without amendment, by two subse quent Acts, till 1st May 1840.

The Assistant Municipal Commissioners have now concluded their exposition of the state of Lower Canada, in regard to the various branches of local administration falling within the scope of their inquiry. In framing this portion of their report, they have aimed at giving a succinct statement of facts, in terms so clear, and with an arrangement so precise, as to be easily understood by persons unacquainted with the domestic history and usages of the province. The result of the inquiry shows the total absence of any efficient or uniform system of internal government. From the passing of the Constitutional Act to the period of its suspension, the country presents few indications of progressive improvement apart from those which are sure to accompany commerce and emigration. The representative chamber of the province tried its hand at every thing, and constructed nothing durable and worthy.* When it ceased to exercise its functions, not a single

* The road law of 1796, which has long outlived its usefulness, was passed with difficulty through the House of Assembly by the influence of the executive. It created much discontent among the *habitans*, who were opposed to the grant of labour or money required under the Act for the maintenance of the roads.

popular institution remained capable of aiding the deliberations of the extraordinary legislature by which it was succeeded; or sustaining the necessary demonstrations of executive power during a season of great public emergency.

EXISTING MEANS FOR LOCAL SELF-GOVERNMENT IN LOWER CANADA.

The only machinery for the working of a plan of municipal government in the province is to be found under the operation of the road law and collateral enactments.

Under the actually existing road law, there are, or may be, in every parish or township nine popularly-elected officers (overseers of highways), acting separately in as many districts, and collectively for the whole parish or township; and under the expired statute, 5 Geo. 4, c. 3, there were, or might have been, 45 officers of like authority, both separate and collective. To each of these popularly-elected officers are assigned duties which require for their due performance as much of education and intelligence as are required for the execution of most of the ordinary duties of a municipal character. By electing two officers from each subdivision of a parish or township, and distributing between them the executive functions for each particular district, and at the same time forming the whole into one collective council, a tolerably efficient municipal body for ordinary local purposes might be called into existence. The surveyor or surveyors may be considered the already-constituted head or heads, appointed, as at present, by the provincial executive—a reservation of authority which, besides being in accordance with the existing law, might, in many cases, prove highly advantageous.

In addition to overseers of highways, there is also in every parish or township another body of officers, chosen by popular election, namely, inspectors of fences. By reference to the duties devolved upon these officers, it will be seen that the law requires and expects from them a higher degree of education than from the highway overseers. Both classes of functionaries are elected for a period of two years, so that in fact we have the machinery adequate for accomplishing the objects of minor municipal jurisdiction, requiring merely a distribution of more various duties, and an alteration of elections, to provide against the retirement of more than one-half of the local authorities at the same time. The attempt to construct out of these materials a good working system of local administration might, owing to the apathy and obtuseness of the

agency employed, prove a failure ; but at all events, it would not be open to the objection of being new-fangled or visionary ; for popularly-elected officers now are, and long have been, depositaries of legislative, judicial and administrative powers for minor municipal purposes over the whole length and breadth of the province. It may, moreover, be fairly inferred, that an extension of powers (still, however, under the correction of the provincial executive), and particularly the control of a pecuniary assessment, would lead to a more careful and discriminating selection of officers. With respect to this most important subject of a pecuniary assessment, it is, we must repeat, deeply to be regretted, that the existing legislature of the province of Lower Canada, as we have had occasion before to remark, is, by the law which constituted it, declared incompetent to levy 'any tax, duty, rate or impost for any purpose whatever'. Such a restriction it is difficult to account for, inasmuch, as has been observed, the similarly-constituted legislature, which existed before the introduction of the Constitutional Act, was, by a special exception, permitted to impose local taxes for local purposes. It might have been supposed that, in suspending the intermediate system, the natural and obvious course would be to fall back upon its predecessor, having due regard to the peculiar circumstances of the time, which certainly were not of a cast to warrant a distrustful and penurious delegation of authority. At all events the effect of the prohibition was to delay, if not to frustrate, the best designs of a government, whose hope of efficiency mainly rested upon prompt and comprehensive legislation. No law, whether for the promotion of education, registry of property, or of judicature or municipal reform, could have been put in operation without the power of local taxation, unless indeed fresh and indefensible sanction had been given to the old and vicious system countenanced by the House of Assembly—the application of the imposts levied on commerce to every provincial exigency, whether partial or general, temporary or enduring.

SUGGESTIONS FOR AN IMPROVED MUNICIPAL ADMINISTRATION OF LOWER CANADA

There are certain alterations in subordinate departments of local government which the Assistant Commissioners feel it their duty to recommend for immediate adoption, under the persuasion that they will constitute, *pro tanto*, a decided improvement on the present state of municipal administration.

In recommending partial ameliorations, they do not for a moment lose sight of the necessity of those extensive reforms which, whatever may be the system of general government, are imperatively demanded for the establishment of law and order throughout the province.

The lesser amendments, however, are not only useful intrinsically, but they will in nowise interfere with any complete scheme of municipal improvement that may hereafter be adopted, and which will necessarily require time to mature. The suggestions for an improved municipal administration fall, therefore, under two heads: first, partial amendment; second, general re-organization.

First. The first head includes the incorporation of the cities of Quebec and Montreal, and an amendment of the Road Laws.

Quebec and Montreal.

It is not easy to overrate the benefits that would accrue from the incorporation of Quebec and Montreal upon those protective and progressive principles on which the European municipalities of the middle ages were founded. It has been shown, in the preceding part of the report, that, by the Constitutional Act, a controlling legislative influence was granted to the representatives of the Canadian *habitans*, an electoral body altogether ignorant of the nature of the trust reposed in them, and inveterately hostile to any measure, however prospectively advantageous, that might trouble their rude repose. It has been shown, also, that this controlling influence was followed by crude, uncertain and one-sided legislation, continued encroachment of the popular branch on the other branches of the legislature, and an eventual disruption of the friendly social relations subsisting between the settlers of diverse origin. The Acts incorporating Quebec and Montreal studiously and unjustly excluded the British settlers from a fair share of local power in the very strongholds of the commercial energy which they themselves had introduced into the province. In the whole colony there was not a single popular institution through which the British could make known their grievances, or develop their capacities for self-control. What has been the consequence? Decreasing colonial enterprise and increasing dissatisfaction with the Government at home, from whatever party the materials of that Government may have been drawn. Destitute of any mode of constitutional organization by which they might be enabled to lay their complaint before the Imperial Parliament or the Executive, the British colonists have been obliged to

rely for aid on the advocacy of the local press—not always wisely guided—or on associations, secret or open, the sure indications of a diseased condition of the body politic. The simple question at issue is, whether the province shall remain French, or stand still until pushed forward by the aggressive movements of the United States, or become English in the progressive and prosperous action, as well as in the outward and visible character of its institutions. As the incorporation of Quebec and Montreal, upon principles equitably regardful of the claims of property, intelligence and enterprise, would materially tend to promote the latter result, while it would remove the plea for associations unrecognized by and inconsistent with law, measures should be taken for that purpose with as much speed as may consort with the secure attainment of the contemplated object.

The outline of a plan of incorporation for Quebec and Montreal is annexed to this report. A scheme of local government for Three Rivers cannot at present be suggested, owing to the want of information collected on the spot.

Amendment of the Road Law.

Popular election, local supervision, judicial disinterestedness and central responsibility, are the theoretical features of the road system, and these are precisely the essential requisites for the successful working of municipal institutions in a country socially circumstanced as is Lower Canada. A few modifications—unimportant probably in the estimation of persons unacquainted with the necessities of a new country, would afford a grateful relief to the settlers, and would bring the promise of theory and the efficiency of practice to a closer approximation.*

These modifications, at least the most important of them, are the increase of the number of deputy grand-voyers, with perhaps only one grand-voyer for the whole province, and the substitution to a certain extent of pecuniary payments for road labour.

With respect to the first modification, it would materially

* It might be advantageous to vest in the grand-voyer, or his local deputy, a discretionary power, within a limited extent, as to the dimensions both of the highways and the ditches; and, also, as to the moulding and repairing of roads. In two sections of country differing so widely in physical characteristics as the upper seigniories on the one hand, and the lower seigniories and townships on the other, legal uniformity as to the matters of detail cannot fail to be productive of inconvenience. But with the introduction of an improved general system, there must be a thorough revision of every branch of the now obsolete road laws.

diminish the travelling expenses of the grand-voyer or his local deputy, and would tend to equalize the costs of *procès verbaux* over the whole province; whereas, at present, the parts most remote from the seats of district jurisdiction, which are generally the poorest, are the most heavily burdened with regard to preliminary expenditure, and that sometimes to so onerous a degree, as to induce them to dispense with the grand-voyer's services altogether. Of course the local deputies would necessarily absorb all the fees, so as to throw the central head on the liberality of the central government.

The multiplication of local deputies is strongly recommended by the grand-voyers of the province, and it was effected for four years under the sanction of the Act 9 Geo. 4, c. 34, s. 3. By the statute which this Act amended and continued, viz., 5 Geo. 4, c. 3, s. 4 & 5, the grand-voyer or his deputy was empowered to appoint two or three surveyors for any parish or township, to act each in a separate division, and to authorize the election of not more than fifteen overseers in as many separate districts under each surveyor. To this enactment we have adverted already. A reasonable recompense by fees ought to be given to surveyors for the time absolutely spent in the discharge of their duty.

Pecuniary payments ought to be substituted for joint labour, whether on front roads or on bye-roads. The advantages of such a modification of the present system would be manifold:—

First. The proprietors, instead of being tempted, as they now are, to choose the worst men, in a practical point of view, namely, the men who are least likely to exact a strict performance of road labour, would be induced to choose the most intelligent, honest and energetic of their neighbours, inasmuch as, under a fixed rate, similar to that now levied in Quebec and Montreal, the difference between a good road and a bad one would really entail no cost upon the inhabitants.

Secondly. The overseers of highways having a much more definite duty to perform, and being allowed much less scope for discretionary indulgence, might fairly be held by their superiors as more directly responsible, and would certainly be so held by their constituents.

Thirdly. The voluntary labour of paid workmen would be far more efficient than the reluctant labour of unpaid workmen.

Fourthly. An incidental advantage would arise to poor and industrious men; as the pecuniary assessment would return to them in the shape of wages for labour, more than they would pay as a rate.

Fifthly. There would be another incidental advantage, inasmuch as farmers could not be dragged from their lands, to the great prejudice of their agricultural operations—an advantage to be the more gravely considered, in proportion to the shortness of the agricultural season, and to the entire dependence of most Canadian farmers on each crop as it is harvested.

Sixthly. A third incidental advantage would accrue from the substitution of pecuniary assessment for joint labour; it would gradually diminish the necessity, and even the desire of provincial grants for local purposes, which are subversive alike of local independence and central efficiency. The merits of the question may in some degree be appreciated from the somewhat analogous practice with regard to private bills in the Imperial Parliament; there being, however, this difference, that the operation of the latter is partial, and of the former universal, both among representatives and constituents. The provincial system—if system indeed it can be called—leads both to jobbing in the appropriation and waste in the expenditure; tempts both representatives and constituencies to purchase the acquiescence of majorities by prostitution of principle; tends to prevent each individual member of the popular branch of the legislature from considering himself, according to the true doctrine of the constitution, a representative of the whole people; and prompts every man to clamour for that spurious administrative economy, which is maintained at the expense of efficiency, with the view of preserving as large a residue as possible of the public funds for general—we might add, eleemosynary distribution.

It has been stated by many, if not most of the witnesses before the commission, that pecuniary assessment in the rural districts would be unpopular or oppressive. But beyond the general fact that the mass of the people dislike taxation, there seems to be no ascertained ground for the allegation, at least at the present day. Throughout the whole extent of the seigniorial parishes, large sums are levied for building and maintaining churches,—a proof that there is no such extreme scarcity of money among the *habitans* as to bar the collection of the very moderate pecuniary assessment that would be required for local improvements of obvious and admitted necessity.

But such pecuniary assessment, though in a modified form, already exists under the road law of 1796. By 36 Geo. 3, c. 9, s. 19, the majority of the overseers of highways of the

parish or township may impose a rate on the parties interested ' when it shall be necessary to pay artificers or undertakers for making or conducting the work to be done on any public bridge, or to purchase materials for the same '. And by the expired Act, 5 Geo. 4, c. 3, s. 7, the majority of the parties interested had the same power with respect to all joint labour —a power which would have been more generally exerted, had not the overseers been obliged to serve notices of the requisite meeting on each and every interested party. In cases of this description the apportionment generally is not based on value, but on extent of property. This basis, whether reasonable or unreasonable in the abstract, is equitable in the case of a composition for road labour, which service itself bears a regular proportion to extent of property, at least in the seigniorial districts. In the newer settlements, however, some distinction ought to be made between the cleared and uncleared portions of any lot or farm, and a register, as has been suggested by Mr. Panet, grand-voyer of the Montreal district, might be advantageously framed, so as not to require alteration for three or four years.

And here would naturally arise the question as to the propriety and expediency of rendering all land, wild or reclaimed, liable to the cost of making and repairing roads and bridges. By the existing law (36 Geo. 3, c. 9, s. 7), all unconceded land and all wild lots in the possession of the original grantees of the Crown are exempted from road duty; but by an Act amending this Act with respect to ' the townships ' (3 Geo. 4, c. 19), all granted lands, with the exception of those of ' a Protestant clergy ', were placed on precisely the same footing. It is to be regretted that a statute so beneficial in practice and so just in principle was only a temporary enactment, and, as such, permitted to die a natural death in 1828.

With regard to the wild land, the practical working of the present system is clearly bad. The resident settler, who is generally straitened in means, is compelled by it to make roads for the absentee proprietor, who is generally rich, and to whom, at all events, the possession of the land is a matter of subordinate consideration. The provisions of the expired Act, modified perhaps in some particulars, ought to be revived in the townships. It ought, moreover, to be extended to the unconceded land in the seigniories, wherever and whenever the seignior is not competent to declare on oath that he has never directly or indirectly refused to concede any land in question on the terms prescribed by the old laws of the country; and should such a change of tenure take place as would render

the seignior not trustee but proprietor, all distinction on this head between townships and seigniories ought forthwith to disappear.

From the errors of the past, we may derive a lesson for the future. Institutions essential to the peace and welfare of the colony, when it first came under the sovereignty of Britain, are still wanting; and, as the ancestral character of the majority of the population remains unchanged, the principles upon which these institutions may be successfully established continue to be the same.

The period of deliberation has been too brief to allow the Assistant Commissioners to mature any scheme of municipal government for a province so disunited in itself, and so complicated in its relations as Lower Canada. But, in addition to an insufficiency of time, there is the farther disadvantage of considering a new municipal system as an insulated question; whereas, under the circumstances of the country, it claims to be regarded in connexion with whatever system of general government may ultimately be substituted for that unhappy shadow of the British constitution, so productive of mischief, so barren of good. Institutions, to operate happily, should be framed so as to dove-tail with each other, and meet in a common correcting and controlling centre.

In the hope that they will not be charged either with fanciful speculation or presumption, the Assistant Commissioners venture to place on record what they wish to be viewed merely as hints for a plan, and not as a digested arrangement. A minute of Sir Charles Grey, in the Report of the Commission of which he was a member, suggests the division of Lower Canada into several subordinate 'legislatures', with one general and controlling legislature. Not prepared to agree with this proposition, under the apprehension (which may be erroneous) that it comprehends an *important* delegation of legislative authority to sectional assemblies, we are still disposed to believe that, by machinery not widely dissimilar, but more guarded in its construction, the province might obtain the benefits of improved local administration. Under this impression, we should be inclined to recommend—

First. A new division of the province, on the principle of territory and population, with the transfer of the inferior district of Gaspé to New Brunswick, taking the river Mitis or Rimouski as the boundary line. The division to comprise 'districts' and counties, leaving the present parochial and township subdivisions unaltered. Each 'district' to be so

far limited in extent as to lie within the direct and constant supervision of an executive head. Proceeding upon this rule, there would, probably, be about eight municipal districts in Lower Canada.

Second. Councils chosen in the same way as overseers of highways under the road law, to administer the affairs of parishes and townships.

Third. Councils chosen by the municipalities of parishes and townships, from persons possessing the double qualification of education and property, to administer county affairs.

Fourth. Councils chosen by the county municipalities, from educated persons possessing a higher property qualification than that required for the county representation, to administer district affairs.

The duties of these various bodies to be of a strictly *local* character and the execution of the duties, as well as the *mode* of executing them, to be provided for and prescribed by a code of municipal law.

Fifth. To assist and temper the action of these municipal bodies, as well as to facilitate the due administration of justice, courts of monthly sessions (more frequent, if need be) with civil and criminal jurisdiction, having paid professional chairmen.

Sixth. A board of internal improvement, to audit accounts, report upon all applications for aid, and make periodical statements to the legislature.

Seventh. Professional engineers appointed by the Crown, to act as superintendents of roads and bridges, in place of the unprofessional grand-voyers.

Eighth. A salaried district chief, appointed by the Crown to preside over district council, and report to the board of internal improvement and the provincial government.

Ninth. A county road superintendent appointed by the provincial superintendent, paid by fees and acting as a deputy grand-voyer, with power to homologate *procès verbaux* at monthly sessions, to preside at county council, and report to district chief.

Tenth. Surveyors of parishes or townships appointed by county superintendent, and paid by fees, to preside over their respective municipalities, and report to said superintendent.

None of the municipal bodies to possess the power of organizing or controlling a constabulary police. The protection of life and property in the rural districts cannot at present be withdrawn, without peril, from the hands of the central executive.

The good to be anticipated from the operation of such a system of local administration as has been faintly indicated, is the breaking up of jobbing connexions between the *habitans* and their representatives, and the introduction of habits of self-reliance among the former. The frequent interposition of responsible executive agencies might be expected to act as a stimulus to the inertness of the French Canadians, while it would enable the central government to discern, at a glance, the condition of the population, and to operate rapidly and simultaneously on every division of the province.

With respect to the pecuniary means for local government and improvement, the correct principles of provincial taxation were clearly laid down by the merchants and others of British origin in 1806. They then contended, in opposition to the majority of the House of Assembly, that 'if the support of the civil government were not to rest on direct taxes, it should, at least, be secured by permanent Acts of indirect taxation, as already introduced by the British Act 14 Geo. 3. c. 83, and the provincial Acts 33, 35 & 41 Geo. 3. That local establishments, such as court-houses, gaols and houses of correction should be defrayed by assessments or indirect taxes upon the districts, counties and cities for whose benefit they might respectively be required. And that, for the general improvement of the country, its agriculture, commerce and communication by land and water with the adjoining colonies and foreign states, recourse should be had to indirect taxes of temporary duration.' *

The construction of great public works by loan, as in the United States, would, in tranquil times, and under a stable provincial government, materially accelerate the physical prosperity of Lower Canada. The construction of the canals of the State of New York has been carried on chiefly with funds derived from loans. The whole amount borrowed is about fifteen millions of dollars; the balance of the debt for their construction is now less than five millions; and the Erie and Champlain Canal fund alone yields a net revenue, after paying all legitimate charges, and all deficiencies of the auxiliary canals, of $718,650 † (dollars). The beneficial effect of the loan system is twofold; it calls into operation individual capital and enterprise, and gives distant capitalists an immediate interest in the welfare of the country.

The Assistant Commissioners feel bound to declare their conviction of the uselessness of all subordinate measures for

* Political Annals of Lower Canada, 1828.

† Message of the Governor to the Legislature of the State of New York.

the improvement of Lower Canada, however promising in appearance, or excellent in design, unless the general government of the province shall be reconstructed, and placed on so solid a basis as to enable it to resist the shock of parties, to maintain the even course of justice, and secure for imperial authority the respect which it has lost by long perseverance in a blind, wavering and anti-national policy. The present moment is peculiarly favourable for the commencement of a new era in Canadian administration. Steam navigation has so far reduced the distance between England and her North American colonies, that the affairs of these most valuable dependencies are capable of being conducted with as much efficiency as those of the remoter sections of the United Kingdom. But it is vain to hope that commerce will thrive, emigration increase, or the lesser institutions for social advancement extend and flourish, until they are assured of the fostering care and protection of a firmly-rooted, enlightened and energetic government.

Will. Kennedy,
Adam Thom,
Assistant Commissioners of Municipal Inquiry.

Quebec, 14 November 1838.

APPENDIXES D AND E.

ORDERED TO BE PRINTED JUNE 12, 1839.

CONTENTS OF APPENDIX D.

Commission by the Earl of Durham, appointing Arthur Buller, Esq., to proceed with the utmost despatch to inquire into and investigate the past and present modes of disposing of the produce of any Estates or Funds applicable to purposes of Education in Lower Canada, &c.

Report of the Commissioner of Inquiry into the state of Education in Lower Canada, &c.

*Returns made to Education Commission, 1838.

†Report of Mr. Dunkin, the Secretary to the Commission.

*Plan of Seigniory of Cap de la Magdeleine.

CONTENTS OF APPENDIX E.

*Copy of a Letter from the Earl of Durham to the Marquis of Normanby, dated 31 May 1839.

*Report from the Chief Secretary, on the Commutation of the Feudal Tenures in the Island of Montreal, and other Seigniories in the possession of the Seigniory of St. Sulpice of Montreal.

*Ordinance of the Governor-general and Special Council of Lower Canada, for incorporating the Seminary of St. Sulpice of Montreal.

*Report from Mr. Turton, on the Establishment of a Registry of Real Property in Lower Canada.

[The sections marked with an asterisk have not been reprinted.]

† Extract only reprinted.

APPENDIX D.

COMMISSION.

VICTORIA, by the GRACE OF GOD of the United Kingdom of *Great Britain* and *Ireland* Queen, Defender of the Faith.

To ARTHUR BULLER, Greeting :—

WHEREAS it is highly expedient that an inquiry should be made into the means of education enjoyed by Our subjects in Our Province of Lower Canada, and into the amount, nature and application of the produce of any estates or funds which may have been set apart for, or may be applicable to, purposes of education, and whether the same have been employed in the most beneficial manner for the said purposes : And whereas it is also highly expedient and desirable, that such a system of education should be established as may most conduce to the diffusion of knowledge, religion and virtue : Know ye, therefore, that We, reposing great trust in your zeal, ability and discretion, have nominated, con-

stituted and appointed, and by these presents do nominate, constitute and appoint you, the said Arthur Buller, to proceed with the utmost despatch to inquire into and investigate the past and present modes of disposing of the produce of any estates or funds set apart for or applicable to purposes of education in the said Province of Lower Canada, and into the present means of education enjoyed by, or within reach of, Our subjects in the said Province: And Our further will and pleasure is, that you, after due examination of the premises, do and shall, as soon as conveniently may be, report to Us, under your hand and seal, what you shall find touching or concerning the premises, upon such inquiry as aforesaid; and also that you shall suggest such alteration, modification and extension of the system of education at present prevailing in Our said Province, or such other management of any estates or funds applicable to such purposes of education, as may in your judgment appear likely to promote the objects aforesaid; and for the better discovery of the truth in the premises, We do by these presents give and grant to you full power and authority to call before you such persons as you may deem necessary, and to inquire of the premises, and every part thereof, by all other lawful ways and means whatsoever: And We do also give and grant to you full power and authority to cause all persons having in their custody any records, orders, regulations, books, papers or other writings relating to, or in anywise connected with, the premises, to bring and produce the same before you; and for your assistance in the due execution of this Our Commission, We do hereby authorize you to nominate and appoint such person or persons as you shall think fit to be Assistant Commissioner or Assistant Commissioners for the purposes aforesaid, or any of them, and to delegate to him or them such and so many of the powers hereinbefore vested in you as may seem expedient: And Our will is, and We do hereby direct and ordain, that the person or persons so nominated by you shall possess and exercise any powers and authorities so as aforesaid delegated to him or them, in as full and ample a manner as the same are possessed and may be exercised by you under the authority of these presents: And We do hereby further authorize and empower you, at your discretion, to appoint such person as Secretary to this Our Commission as to you shall seem proper.

In testimony whereof, We have caused these Our Letters to be made patent, and the Great Seal of our said Province of Lower Canada to be hereunto affixed.

Witness, Our right trusty and right well-beloved John George Earl of Durham, Viscount Lambton, &c. &c., Knight Grand Cross of the Most Honourable Military Order of the Bath, one of Our Most Honourable Privy Council, and Governor-general, Vice-admiral and Captain-general of all Our Provinces within and adjacent to the Continent of North America, &c. &c. &c. &c.

At Our Castle of St. Lewis, in Our City of Quebec, in Our said Province of Lower Canada, the 4th day of July, in the year of our Lord 1838, and in the second year of Our reign.

D. Daly, Secretary of the Province.

REPORT of the Commissioner of Inquiry into the State of Education in *Lower Canada*.

My Lord, Quebec, November 15, 1838.

In the instructions given in 1835 by Lord Glenelg to the Canadian Commissioners, his Lordship, after pointing out the importance and the difficulty of their inquiry into the state of education, concludes by observing,—'This is a task, the due performance of which requires so intimate an acquaintance with the character and wants of the people, that I doubt whether, within the time of your residence in Canada, it will be possible for you to be completely prepared to form a deliberative conclusion over a question thus comprehensive.'

If any doubt could be entertained of the sufficiency for such a purpose of the period which was then contemplated by his Lordship, but small results can reasonably be expected from the labours of the commission with which I had the honour of being charged, when it is borne in mind that they only commenced on the 1st of August, and closed in the early part of the following November, and that the difficulties, which were anticipated in the case of the Canadian Commissioners, had been greatly aggravated by the political events which intervened between the two periods. Had I been aware that my time and opportunities were to be so abridged, I should have entered upon the various considerations involved in this extensive inquiry separately, and in the order suggested by their importance and connexion; thereby enabling myself to report information, which, if extending only over part of the subject, would still have been complete as far as it went, and would to that extent have furnished materials for immediate legislation. But anticipating no interruption;

imagining that the whole inquiry lay before me, and finding it so divided as to admit of the simultaneous labour of a variety of different parties, I thought I should best economize my time by putting each of such parties in possession, as early as possible, of the nature of the information which I sought from them, and thus enabling every part of the inquiry to be in progress at the same time. The doing this, however, in a convenient form, and the previous necessity of making myself master of each point, were works of so much labour, that, by the time I was called upon to relinquish my task, I found that, though every thing was set in train, nothing had been completed.

I have nevertheless succeeded in eliciting some information. It is no doubt too scanty to deserve the form and name of a report, and unfortunately its authenticity, even to the small extent that it goes, stands unattested by the formal evidence of any witnesses, because, although I was in daily communication with the leading authorities on this subject, in Quebec, I abstained from committing their answers to paper till I should be in a position to question them upon all the points to which their information extended.

The subject of Canadian education naturally divides itself under two general heads: the state in which it has been in former times, and now is, and that to which it is proposed to raise it hereafter.

To the Catholic Church Canada is indebted for all its early scholastic endowments; indeed, with the exception of M'Gill's college, for all that at present exist. The ample estates and active benevolence of the Jesuits, of the seminaries of Montreal and Quebec, and of various nunneries and their missions, were devoted to the education of the people. It is impossible to pay too high a tribute to the merits of this most exemplary Church. Its existence has ever been beneficially felt, and its career has been marked throughout by the most faithful discharge of its sacred duties, and the most undeviating allegiance to the British Crown.

The Jesuits' estates, however, soon ceased to be available to the beneficent objects of their grantors. The British Government, on the dissolution of that order, entered into possession; and, not content with diverting their proceeds from their original destination, unfortunately adopted the mode of appropriation the most obnoxious possible to that part of the population for whose benefit they were first granted, and who were the most clamorous for their restitution.

The first proposal of the Government was to present them

to Lord Amherst, by way of compensation for his military services in the reduction of Canada. This it at length abandoned; not, however, until after a long struggle, and after the grant had been actually made out in favour of his Lordship. Nor were the French Canadians alone in their complaints. At the first session of the newly-constituted legislature, in 1792, a petition, signed wholly or in greater part by the inhabitants of British origin, was presented to the House of Assembly from the city and county of Quebec, setting forth the original destination of the Jesuits' estates, and showing, that, owing to their diversion, the province was utterly without the means of education. An address to his Majesty Geo. III., upon this petition, was unanimously adopted by the Assembly and transmitted to England, but no answer was received till upon the presentation of a similar address on the following year, the Governor informed them, that, in consequence of the previous one, the claims of the province had been considered by his Majesty in Council, and that the result of that consideration had been an order to take possession of these estates for the Crown. He concluded by suggesting, that possibly any further applications on the subject might be inconsistent with the accustomed respect of the House of Assembly for the decision of his Majesty on matters connected with his prerogative.

Accordingly, the subject was dropped for the moment. However, as it was resumed almost annually from that period to the final surrender of the estates to the Provincial Legislature, in 1832, it will be more convenient to dispose at once of this part of the question by presenting certain facts reported by a committee of the House of Assembly in that last-mentioned year, in which the grievances, as far as relates to the misappropriation of this fund, are brought together, and, it would seem, fully substantiated.

It appears that, from the year 1800 to 1831, the gross receipts in respect of the estates amounted to 49,000*l.*: of this 8,650*l.* odd were expended in their management; 622*l.* in pensions; for unknown services (which in fact comprised an allowance to the then Attorney-general for his expenses in going to England to defend himself against the impeachment of the House of Assembly), 1,719*l.*; law expenses connected with M'Gill's college, a Protestant institution, 780*l.*; the maintenance of a Protestant chaplain (authorized in a despatch of Sir George Murray, dated 2d June 1828, 984*l.*; building Protestant churches, 9,793*l.* There appears certainly an item of 12,389*l.* for the support of three schools; but it

should be remarked that these were all what the Catholics looked upon as purely Protestant establishments, and were by them avoided as such. The English Government might maintain that in these appropriations it merely exercised the right which it undeniably possessed of doing what it liked with its own; but it cannot be matter of surprise that the Catholics of Canada should have felt discontented, when they saw the great Catholic legacy of their forefathers thus converted into a fund for the establishment of a rival Church. At length, after years of incessant struggling, Lord Goderich announced, in his despatch of the 7th July 1831, the determination of the Crown to resign to the Colonial Legislature, for the purposes of education exclusively, the Jesuits' estates (with the exception of the barracks, and even these on condition of others being built), and the then existing balance in respect of them. His Lordship then goes on to mention, that two sums, the one of 7,154*l.* odd, and the other of 1,200*l.* odd, had lately been recovered from the estate of Mr. John Caldwell, and directs that both shall be placed at the disposal of the Legislature, the former for general purposes, and the latter, with reference to principles previously noticed, for purposes of education exclusively. The reason of this distinction is rather curious: it appears that the two sums were recovered from different estates: on the former the Government had claims on the ground of Mr. J. Caldwell's default as receiver-general. These claims, however, were posterior to those of several private individuals, and therefore were of no value. The prior claim of all was that of 'the Jesuits' estates', to which, for a debt incurred as their treasurer, both properties had been mortgaged by Mr. J. Caldwell's father. The Crown accordingly effected the recovery by availing itself of its capacity of proprietor of the Jesuits' estates, to sue Mr. J. Caldwell, as heir-at-law to his father, for this debt. As regards the smaller property, it never having come into Mr. J. Caldwell's hands, and not being, therefore, liable for his default as receiver-general, the claim of 'the Jesuits' estates' to the 1,200*l.* recovered out of it was unopposed. However, there is really no distinction between these two claims of the Jesuits' estates: both were equally good: the only difference is, that against the one there were no pretensions to set up at all, and, against the other, none that had the slightest show of legal weight, both being founded on the same original debt.

Reverting to Lord Goderich's despatch, it must not be forgotten that the larger sum of 7,154*l.* was directed by his

Lordship to be placed at the disposal of the legislature for general purposes.

A committee of the House of Assembly, by their report, dated 7th February 1832, after finding, among other things, that both the above sums mentioned in Lord Goderich's despatch were then in the hands of the receiver-general, conclude by recommending that they shall both be carried to the account of the Jesuits' estates, &c. &c.

Accordingly, in pursuance of this report, and embodying every one of its recommendations, is passed the 2 Will. 4, c. 41, whereby it is enacted, 'That all the monies arising out of the Jesuits' estates then in or that might thereafter come into the hands of the receiver-general, should be placed in a separate chest, &c., and should be applied to the purposes of education exclusively.' Now, it is clear that both sums in question did arise out of the Jesuits' estates, and that both were then in the hands of the receiver-general.

Besides (waiving the benefit of all this argument) Lord Goderich, having left the larger sum to the disposal of the legislature for general purposes, the legislature selected, of their own free choice, as is clear from the above report of their committee, those of education; and surely they come under the head of general purposes.

Nevertheless, in the face of this Act, concurred in by both Houses, and assented to by the Governor, and as authentic a law as ever law was, in the following September, the appropriation which appears to have been contemplated by Lord Goderich was actually enforced by order of Colonel Craig, the then Civil Secretary, and the 7,154*l.* transferred to the general fund of the province. The other injunction of the Act, as to keeping the future balances of these estates in a separate chest, has been no better observed. They have been invariably mixed with the other public revenue, a separate account only being kept to show their amount.

By this account it appears that the balance on the 10th October 1838 had accumulated to 13,436*l.* 4*s.* 6¼*d.* If to this is to be added, as it unquestionably ought, the 7,154*l.* currency, or 6,439*l.* 5*s.* 10½*d.* sterling, the whole fund applicable to education, in respect of the Jesuits' estates, will amount to 19,875*l.* 10*s.* 4*d.* sterling.

As regards the condition annexed to the surrender of the Jesuits' barracks, I fear it is not capable of fulfilment. I communicated with the military authorities on the subject, and was informed that the Crown was in possession of no land within the walls, where barracks must be, sufficient for their

site; and of course it would be bad economy in the province, with a view to getting back the lost property, to incur, first of all, the expense of purchasing land in the town already built upon, pulling down the buildings, and then erecting new barracks, and afterwards that of pulling down the old ones and raising more profitable buildings on their site. The most equitable arrangement, I should submit, would be for the Crown to come forward now and pay the proper market price for what it has so long withheld.

A full description of these estates will be found, in a tabular form, in the Appendix to this Report, (Letter A.), as also a minute criticism of their past management, and suggestions for their future improvement. This has been the undivided labour of Mr. Dunkin, the secretary to the commission, to whose unremitting exertions in this and other departments of the inquiry, not only during the continuance, but for some months subsequent to the expiration of the commission, I am indebted for much of the information I am able to supply.

To take up the order of events where it was broken off, the hopes of the friends of education in the province, which had been grievously disappointed by the Governor's recommendation in 1800 to abstain from any further complaints, were fully revived by his announcing, in his speech of the following year, the benevolent intentions of the Imperial Government. 'With great satisfaction I have to inform you, that his Majesty, from his paternal regard for the welfare and prosperity of his subjects of this colony, has been graciously pleased to give directions for the establishing of a competent number of free schools, for the instruction of their children in the first rudiments of useful learning, and in the English tongue, and also, as occasion may require, for foundations of a more enlarged and comprehensive nature; and his Majesty has been further pleased to signify his royal intention, that a suitable proportion of the lands of the Crown should be set apart, and the revenue thereof applied to such purposes.'

The 41 Geo. 3, c. 17, an Act founded on these promises, and intituled, 'An Act for the establishment of Free Schools and the advancement of Learning in the Province,' was immediately passed. It will be found abstracted in Appendix, (Letter B.), No. 1. The following are its principal provisions.

The Governor is empowered to erect a corporation, to be called 'The Royal Institution for the advancement of Learning', with all necessary powers for holding land in mortmain, &c., to be composed of trustees to be appointed by the Governor. To this corporation the entire management of all schools and

institutions of royal foundation in the province, as well as the administration of all estates and property which may be appropriated to the said schools, is committed. The sanction of the Governor is required to all rules and statutes which may be made for the schools by the trustees, and for the government of the masters and scholars. He may establish one or more free schools in each parish or township, as he may see fit, upon the application of the inhabitants, or a majority of them, to that effect, and he appoints the masters, and orders their salaries, after the conveyance of the school-house to the trustees, which is to be done immediately upon their completion; the expense of the erection of the houses to be equally apportioned among the inhabitants.

In 1803 the promised grants of land, by which the contemplated schools were to be supported, never having been made, the Executive Council recommended to the Governor that 16 townships of the waste lands of the Crown should be appropriated for this purpose. In answer to this recommendation, the province received the same year an assurance that 20,000 acres should be granted to each of the cities of Quebec and Montreal for the support of a seminary, and that immediate steps should be taken in the matter. These steps, however, never were taken, the grants of land never made, and the Act of 1801 remained a dead letter.

Complaints of this bad faith have never ceased. In answer to one of them, as late at 1831, Lord Goderich, after admitting that grants of land had been promised by the Crown, adds, 'that of course such promises are binding and must be carried into effect, unless there are circumstances, of which he was not then apprized, which might have cancelled the obligation contracted in 1801, or which may have rendered the fulfilment of it at that time impracticable.'

However, this admission was followed by no better results. Up to this moment the only Acts of the British Government, in respect of Canadian instruction, have been the wholesale seizure, and the partial restoration, of the Jesuits' estates. At length the House of Assembly determined to take up this question, and passed a Bill, which, however, was thrown out by the Legislative Council. Its principal features are the same as those which distinguish the Elementary School Acts that subsequently came into operation, and to which I shall shortly call your Excellency's more particular attention. Two of its provisions, namely, those contained in the 11th section, are worthy of notice. They both relate to the master; one requiring that, among other qualifications, he shall bring

a certificate of loyalty, and the other fixing his salary at 60*l*. This latter particular I advert to, because it shows what far juster notions were entertained in those days of the competent provision for a teacher, than appears to have been the case in later times. An abstract of this Bill will be found in Appendix (B.) No. 2.

In 1818 another Bill was passed by the Assembly. This, after reciting the necessity of elementary schools, and the advantage of subjecting them to local control, vests the trusteeship of those created under its provisions in a corporation, consisting of the rector, curate or priest, &c., with the four churchwardéns last appointed, of the Church of England or the Roman Catholic Church, the seigneur primitif and senior justice of the peace, who were to report annually to the inhabitants. A sum of 200*l*. was to be granted from the provincial treasury to the trustees of every parish or township in which a house had been built and opened, sufficient for the residence of a master, and the instruction of 30 children. The school was to receive no further support from the legislature, but was entitled to one-fourth of the yearly revenues of the fabrique, until its yearly income from other sources should amount to 100*l*.; and the master was to be paid by fees from the children, never, however, at a rate exceeding 5*s*. per month from each. This Bill, (*see* Appendix (B.) No. 3,) after some amendments by the council which were concurred in, was reserved for the Royal Assent, since which it was never heard of. A similar fate attended two similar Bills the two following years.

Up to this period the corporation contemplated by the 41 Geo. 3, having never been erected, letters patent were issued for that purpose in October 1818. The Protestant Bishop of Quebec was named the principal of the institution, and certain other trustees from time to time appointed to act with him.

Great stress has been laid upon the two following rules, which are among the first they made, as indicative of the liberal spirit in which they entered on their duties: 'That every school should be placed under the immediate inspection of the clergy of the religion professed by the inhabitants of the spot, and that, where they might be of different persuasions, the clergy of each church should have the superintendence of the children of their respective communities.' 'That a regular superintendence of the schools was assigned to visitors named by the corporation (one or more to be the minister or ministers of the parish or township), who were to report to them every six months the number and progress of

the scholars, the conduct of the masters, and generally on the state of the schools.'

The institution entered upon the management of all the then existing schools supported by Government, and continued from year to year, but very slowly, to augment their number. This remained the sole legislative provision for education up to the year 1824. It will be perhaps better again to break in upon the regular course of events, and pursue the history of the Royal Institution to its end, disencumbering it from the other systems which were for some years co-existent with it, and by which it was finally absorbed. That it failed entirely is admitted on all hands, and there is no disagreement as to the immediate cause of failure, namely, its unpopularity with the French Canadians and the Catholic Church. This unpopularity was founded on the exclusively British and Protestant character by which, it was asserted, its organization and management were distinguished. A committee of the House of Assembly, appointed in 1824 to inquire into its operation, reported, among other things, that, out of its 20 trustees, only five, and only 22 out of its 81 school visitors, were Canadians. In spite of the apparent liberality of the rules, this constitution of the authorities, by whom they were to be carried into effect, inspired such jealousies, and so offended the religious and national antipathies of the Canadians, that they withdrew their confidence from the institution, and rarely applied for schools under its direction. And, indeed, this was a natural enough result. Suppose the proportions of the members of the corporation and of the visitors, as regards their national origin, had been reversed, and that the Catholic bishop had been placed at its head, what would have been the popularity of such an institution with the Protestants and the British ?

In the townships the system naturally worked better, and the demand for schools was proportionately great.

In 1827 an attempt was made to divide the board of the institution into two committees, composed of an equal number of members, and possessing equal privileges ; the new one to be entirely Catholic, under the presidency of the Catholic bishop, and to have the exclusive management of all Catholic schools. After the two parties had with some difficulty been brought to acquiesce in this arrangement, it was discovered that there were some legal impediments in the way of carrying it into effect, and a Bill for the repeal of such parts of the 41 George 3, as interposed these impediments, was suggested by Sir James Kempt and brought into the Assembly,

but soon after dropt. An abstract of this Bill is given, Appendix B. No. 5.

It appears, from successive reports of committees, that the number of schools under the Royal Institution, after a certain time, diminished rather than increased. In 1827 they amounted to 82, of which 64 were Protestant, and only 18 Catholic. In 1832 there were but 72, in which there were only five Canadian masters; and in 1834 the whole number was reduced to 63. The last application for a new school to the institution was in 1828.

This decline is easily to be accounted for, by the greater popularity of the school system which came into operation in 1829, and of those which succeeded it. A sum, varying usually from 1,800*l.* to 2,000*l.*, was annually voted to the trustees of the corporation for the support of their schools up to 1832, when it was reduced to 1,265*l.* Since this latter period the Royal Institution fell into the general elementary school system, and its schools were supported and managed in the same manner as those thereby created, with the exception that the corporation was still permitted to exercise the powers in other cases intrusted to trustees elected by the localities.

The corporation has now no other function than the trusteeship of M'Gill's college, which establishment will be noticed hereafter.

I have shown that, from the moment the Royal Institution came into operation, systematic attempts were annually made by the House of Assembly to substitute some other more popular management.

In addition to the Bills, with this view, of 1818, 1819 and 1820, which, after being passed by both Houses of the Provincial Legislature, were left unnoticed by the Home Government, two others, brought up in 1821 and 1823, were thrown out by the Legislative Council.

At this period a committee, reporting upon the then lamentable state of education in the province, represent that in many parishes not more than five or six individuals can write, and that, generally, not above one-fourth of the entire population can read, and one-tenth write, and that very imperfectly.

At length, in 1824, the Assembly so far succeeded as to carry through a Bill, which became the 4 Geo. 4, c. 31, and is commonly known by the name of the 'Fabrique Act'. By this the fabriques, or local corporations, established in each Roman Catholic parish, by which the temporalities of the parish church are administered, are authorized to establish one or more schools in each parish of the province according

to its population, and to have the sole management of them.

They are further authorized to purchase and hold property to a certain amount, real and personal, for the support of these schools, and, until such property is acquired, may apply to that purpose one-fourth of their revenue. This Act will be found abstracted, Appendix, (Letter B.) No. 4. But it can hardly be said to have ever come into operation. In some parishes the fabriques were too poor, and in most, I have been assured, the existence of the Act was unknown. Like that established under the Royal Institution, the fabrique school-system became absorbed in those of a more general and popular character, which were shortly after established. The first of these, which forms a remarkable epoch in the history of Canadian education, was established by the 9 Geo. 4, c. 46. It will be observed that all the abortive attempts made from 1818 up to this period, as well as the Act of 1824, had alone in view the wants of the French Canadians, which were virtually untouched by the Royal Institution, and which undeniably called for urgent relief. It is true, that, as regards the receipt, at starting, of a certain sum of public money, the Protestant settlements were put on the same footing as the Catholic ; but reliance for the subsequent support of the schools was placed first of all upon the fabriques, a fund which only existed in Catholic parishes, and eventually on charitable endowments, which were only to be expected from the greater wealth and zeal of the Catholic Church.

Imperfect as the provisions of these Bills were for the erection of any thing approaching a sound and general system of education, no fault can be found with the spirit in which they were devised by the Assembly. It appears to have been one of fairness and sincerity, and liable to none of the imputations which attach to similar proceedings of that body in later times.

By the Act of 1829 the establishment and sole management of schools in their respective parishes and townships was confided to five trustees, elected by the resident landholders eligible to vote at elections. These trustees were empowered to hold property belonging to the school, and to receive benefactions. Half the expense of erecting schoolhouses, if not above 50*l*., is to be advanced from the public chest on the certificate of the trustees.

A salary of 20*l*. is to be given to every master teaching 20 pupils, and a further allowance of 10*s*. a head for poor children, provided their number does not exceed 50, nor fall

short of 20. The trustees were required to report annually to the legislature.—[*See* Abstract, Appendix (B. 6.)]

Under this Act, which was to be in force for three years, there was no provision for visitatorial inspection.

The trustees, who in very few instances could write themselves, as is proved by the almost invariable use of marks instead of signatures in their returns, had the power of appointing and removing the masters; in short, the entire control of the schools. It is true that they were required to make annual returns to the legislature; but then nothing was more easy, and, I have been informed by many persons, nothing was more common, than for them to make false returns.

In many schools where there were not 20 scholars *bona fide* taught gratis (the number requisite before the gratuity of 10*s*. a head was to be granted), I was assured that it was a very usual device of the master to ask of his neighbours, or of another school, the loan of a sufficient number of children to satisfy this condition. Indeed, where children were scarce, parents were known to lend themselves to this good-humoured arrangement. The trustees, when they knew all this, generally connived at it willingly enough, because they generally wished well to the master, who was of their own appointment, and because the gratuity did not come out of their pockets, but, on the contrary, was pretty sure to find its way into them, the master being very frequently in their debt, and, as they well knew, having no other means of paying them.

In 1830 and 1831, two other Acts were passed, slightly amending and explaining the provisions of that of 1829. By the latter, the Governor was empowered to appoint 19 visitors, who with the members of the House of Assembly resident in the country, and the resident rector or curate of the parish, were to divide the country into school districts, visit the schools annually, and report their state to the legislature, with any recommendations they might be disposed to make.

Schools rose rapidly under the Act of 1829. In that year 48 houses were built, under its provisions, and 381 schools received the Government allowance. In 1830, 60 more houses were built, and the number of elementary schools increased to 899. In 1829, the whole cost of education to the province was 13,785*l*. 16*s*. 3*d*., including, in addition to the expenses of the elementary schools, 2,115*l*. 10*s*. for the 84 under the Royal Institution, and 5,250*l*. 3*s*. for special grants. In 1830, the gross amount under these same heads was increased to 26,019*l*., and in 1831, the whole number of elementary schools was 1,216, and the whole cost of education 32,470*l*.

It is time here to explain the meaning of these special grants. The general educational Acts which have been noticed were meant to embrace only the elementary schools in the rural districts. Many of those, originally established by voluntary associations in the three towns of Montreal, Quebec, and Three Rivers, as well as sundry superior academies and colleges, dispersed over various parts of the province, were the subjects of separate annual appropriations. The first of these was in 1823, when 200*l.* was granted to a school in Quebec under the management of the Education Society in that town. In the following year there was only this same grant. In 1825, a like sum was also given to the British and Canadian school at Montreal. Every subsequent year fresh institutions received similar aid, and the grants under this head have been shown, in 1830, to have increased to 5,250*l.* 3*s.*

In 1831, the House of Assembly appointed a standing committee of 11 members (five to be a quorum), to report from time to time on all subjects connected with education.

The Act of 1829 having expired in May 1832, the 2 Will. 4, c. 26, was passed for the continuance of the system for two more years. Before noticing the peculiar provisions by which this Act is distinguished from its predecessors, it will be proper to advert to the reasons given for such distinction by the Education Committee. In 1831, they report, 'that they cannot but regret that they have had evidence that in several instances too much dependence has been placed on legislative aids, and, in some cases, to a degree which seems to have had the effect of relaxing the exertions which were formerly made. Your committee cannot too strongly impress upon the House the mischiefs which would result from such a dependence, and placing the public money in the hands of societies or individuals practically liable to no sufficient responsibility, or regular or strict accountability, unless they at the same time have to apply a considerable portion of their own money along with that of the public.'

The same committee, remonstrating against large legislative grants, dwells on 'the abuses and corruption which uniformly attend the lavish expenditure of public money. Education itself suffers in the estimation of the public; false ideas are spread abroad among the people, that education is rather an object which concerns the community than themselves individually, and it is undervalued, while in reality it is become nearly as needful in the present state of things in this province as religious instruction, or instruction in the means of gaining an honest livelihood, for which it is the

bounden duty of every head of a family to provide to the utmost of his power. To draw the money from the people by taxes, to be restored to them for these purposes, after undergoing all the diminution of the expenses of collection, management and waste, would soon impoverish them without effecting the object in view.'

In 1832 the Committee report, that the increasing applications for public money render certain regulations necessary, and as warning to the public that less reliance than theretofore must be placed in aids from the general funds, and more from the localities immediately interested; and that, for these reasons, it is desirable, 1st, to grant no new allowances, except on the most urgent grounds, but rather to diminish those already granted; 2nd, to confine aids for elementary instruction in the towns, as much as possible, to one elementary school connected in some degree with one of each of the principal religious denominations, where all the poorer classes may have easy admission. It goes on 'to regret that the applications during that session were nearly as numerous and great in amount as in the previous one. The extraordinary efforts which were made by the legislature under the unfortunate state of things which had so long retarded education in the province, and in a prosperous state of the public funds, have widely spread abroad the idea that the expenses of the education of youth were to be defrayed out of the public revenue; and the abuses consequent thereon have, no doubt, in some instances, made those who profited by them overanxious for their continuance. The present state of the public funds, however, will force a return to more correct notions and practice. Your committee cannot conceive that it will ever be expedient to draw money from the industry of the people, by an expensive process, to be returned to them in greatly diminished amount, for objects for which they can apply it more certainly, more equitably, and with greater economy, under their own immediate control.'

In this report the committee remark, that the proportion of children attending school in Lower Canada is one in 12; whereas, in the neighbouring state of New York, it is one in four. By the 2 Will. 4, c. 26, founded on this latter report, 1321 districts were adopted as laid out by the visitors appointed the preceding year.

To a school in each of these districts, and also to a separate girls' school in that district in every Roman Catholic parish in which the church was situated, an allowance was given of 20*l.* per annum, provided that no more than 2*s.* per month

was demanded from each scholar, and that 20 scholars, from 5 to 15 years of age, had been in regular attendance for 190 days in the year. Ten shillings were to be distributed yearly, as prize-money, among the best scholars in each school, by the first resident member for the county, on the return; otherwise by the non-resident one. The management of the schools was intrusted to trustees, as in the Act of 1829. The teacher, before appointment, must produce a certificate, signed by the minister of the most numerous religious denomination in the parish, according to the latest census, and by one justice of the peace, and the militia officer of highest grade in the parish, or by two others, that he is known as of good character, and that he has been examined by them, and found capable of teaching reading, writing and arithmetic, in the language of the majority of the inhabitants. He might be removed, either on the representation of a majority of the county visitors, or, after hearing, by the trustees, on the complaint of three electors. A public examination was to be held yearly, and three at least of the visitors were to make an inspection of the school, which they were to certify, as directed by a schedule annexed to the Act. No more than 10 free scholars were to be admitted to any one school, and then only when their parents had another child at school, for whom they paid. The visitors were to be the legislative councillors resident in the county; its members in the House of Assembly, whether resident or not; the senior acting justice of the peace, the militia officer of highest rank, and the minister of the most numerous religious denomination. These visitors, in addition to the duties before mentioned, were to determine all questions relating to districting and building houses, &c., and they alone were to have their expenses paid.

The schools of the Royal Institution were embraced in this Act.

The other most remarkable alterations introduced by it consisted in the additional powers which it vested in the members of the House of Assembly. They were to have the distribution of the 10*s.* prize-money; indeed the whole powers of visitation may be said to have centred in them, because their political importance generally enabled them to do as they chose with those of their co-visitors who resided in the parish, and because the members of the Legislative Council were few in number, and rarely fulfilled the condition of residence in the county. Complaints were frequently made of the improper application of the prize-money entrusted for distribution to the M. P. Ps.

A writer of no small merit, in an article addressed to the 'Populaire', Canadian newspaper, and signed, L. P. R. Instituteur, remarks: 'Sur ce sujet je puis dire à la honte de ceux à qui il appartient, que bien des écoles ont été privées de cette gratification. Moi-même, je me suis obligé d'écrire à un représentant du comté de Berthier pour lui mander, "s'il avait envoyé l'argent qui était destiné à récompenser les enfans des écoles, qu'il y avait deux semestres que les visiteurs de notre paroisse n'avaient rien donné pour cet objet." Il me fit réponse qu'il avait donné l'argent à un des principaux de la paroisse, où je tenais l'école; que si ce dernier ne l'avait pas distribué, il y avait mauvaise foi de la part de cet individu. Alors je dis à l'un de mes sindics d'aller trouver l'individu en question, et de lui demander les récompenses des enfans; qu'avec ce peu d'argent les enfans se pourraient acheter des livres, du papier, et d'autres choses nécessaires pour l'école. En y allant il reçut à peu près la réponse suivante: "Je garde, dit le visiteur, cet argent pour payer les frais d'annonces, les lettres non affranchies, et l'acte d'élection des sindics." Combien d'autres abus que je mentionnerais, si le tems me le permettait, et combien d'autres encore se sont passés inapperçus! S'il y a eu des visiteurs si peu délicats jusqu'au point d'enfreindre les lois eux-mêmes, il ne faut pas s'étonner s'il y ait eu des sindics qui se soient rendus encore plus coupables, pour des sommes beaucoup plus considérables, par exemple dans la construction des maisons d'école. Je fus témoin lorsqu'un sindic dans le comté de St. Hyacinthe reçut une verte leçon de Mr. Roc de St. Ours, dans le courant d'Août 1832, pour avoir retiré 50*l.* du gouvernement pour la bâtisse d'une maison, dont voici à peu près l'histoire. Le terrain sur lequel la maison était bâtie avait été donné en pur don à la fabrique de la paroisse. Le seigneur du lieu avait fait don de tout le bois, en outre 14 à 15 habitans avaient donné chacun trois à quatre piastres à part des corvées, de manière que la maison fut édifiée sans avoir coûté 15 piastres. Le sindic, qui s'ingérait de cela, fit estimer le terrain et la maison à 100*l.* pour retirer 50*l.*, comme il était dit dans l'acte d'éducation. Il les retira en effet, et la maison est toujours restée imparfaite. M. de St. Ours fut tellement surpris de voir cette maison, qu'il dit qu'elle n'était bonne qu'à loger les poules. Quand il sut en outre que le gouvernement avait donné 50*l.*, c'est pour le coup que le pauvre sindic se fit tancer, et qu'il en reçut sur les quatre faces. Le curé de la paroisse, voyant le maître et la maîtresse si mal logés, leur donna onze piastres pour faire cloisons. Il

paraît à présent que le propriétaire du terrain s'en est emparé. Voilà un exemple qui fait voir que l'argent a été dissipé ou mal employé ; car avec 50*l*. toutes personnes peuvent faire une bonne maison, bien parachevée en dedans et en dehors, lorsque les matériaux sont sur la place gratuitement. S'il y avait une perquisition sur toutes les maisons qui se sont bâties, sous les dispositions de l'acte, il est certain qu'on y verrait avec surprise plusieurs cents louis de dissipés et perdus pour la province, mais qui ont grossi la bourse de certains tartuffes avides d'argent.'

Complaints were also very frequently made that the provision, which required the master's certificate to be signed by the county members, before his allowance could be drawn, gave them a power over him, which was too often propitiated by acts of political subserviency. I frequently heard these charges made, and in no few instances attempted to be substantiated by facts. Though it is necessary in Canada to be very suspicious of statements advanced by political parties in disparagement of their adversaries, or in vindication of themselves, no one who is conversant with the fury of Canadian partizanship can help recognizing in the provisions of this Act temptations to abuse sufficient, under such circumstances, to overcome the scruples of belligerent legislators.

The 3 Will. 4, c. 4, made some alterations in the school districts, as laid out in the previous year, and reduced their whole number to 1,294. It also contained a very judicious provision for granting 4*l*. extra to every master who should teach both languages.

The Education Committee in their report in 1834 still complain of the extravagance of the school grants, and express a hope 'that the time is not far distant when the whole country will be persuaded that it is much better to trust to themselves for the discharge of the duty of affording useful instruction to their offspring, rather than depend upon legislative appropriations.' The 4 Will. 4, c. 9, continued the Act of 1832 to May 1836. By this the school districts were again increased in seven counties, and the visitors were empowered to grant 10*l*. extra to the best master in every county, namely, the one who had the largest and best conducted school ; provided that in addition to the ordinary course of elementary instruction he also taught geometry, French or English grammar, and book-keeping.

In 1835 the House of Assembly having come to the resolution of not proceeding to business, no Education Bill was passed. In the session 1835–6 special grants were made

amounting to nearly 12,000*l.*, being, in point of fact, the allowance for the previous as well as the current year. The reports of the Education Committee this year are much in the same strain as those before referred to. They state, 'that the liberality of the legislature, far from having stimulated the efforts of the members of the institutions connected with education, appears on the contrary to have paralyzed them.' They go on to represent the unreasonable demands made by the inhabitants in many places for new schools districts. 'These applications,' they say, 'do not, generally speaking, come from places which appear by their population to be entitled to a greater number than that now allowed them; but, on the contrary, from places where the proportion of the number of school districts is four times greater than some others. The single fact that a school district is asked for a place in which there are only three families, will be sufficient to satisfy your honourable House of the necessity of examining applications of this nature with the most scrupulous attention. Your committee have come to the determination to recommend, that for the future the number of school districts in each county be regulated by its population.' It appears from these reports that the cost of education in the three preceding years had been as follows:—In 1833, 22,154*l.*; in 1834, 24,543*l.*; in 1835, 25,810*l.* In the last year there were 1,202 schools and 38,377 children in attendance, of whom 14,048 were gratuitously instructed, and 24,329 paid, or professed to pay, at the rate prescribed by law. The committee, after commenting upon the universal incompetency of schoolmasters, &c., conclude by recommending two Bills; the one for the establishment of Normal schools, and the other for the continuance of the general elementary system. The first of these became law (6 Will. 4, c. 12.)—*See* Abstract, Appendix, (B. 12.)

It provided for the establishment and support, for five years, of two Normal schools, one at Quebec and the other at Montreal, to be under the management of a committee, of 10 persons in each city; each committee was allowed 400*l.*, to enable it to procure professors, and purchase books and apparatus; 600*l.* per annum, for five years, for salaries for such professors, and 250*l.* per annum, for a like period, for the contingent expenses of the schools. A further yearly sum of 120*l.* was granted to each, for three years, for the maintenance and tuition of five or more poor schoolmasters desirous of completing themselves in the art of teaching: and a like sum was granted, for the like period, to the Ursuline Nuns of Quebec and Three Rivers, and the Sœurs de la Congrégation

de Notre-Dame at Montreal, for the maintenance and tuition of five poor young females willing to devote themselves to teaching. The schools were to be open only to persons above 14, who would give good security that they would accept employment for five years after leaving the Normal school in some superior or elementary institutions in the province, under penalty of refunding to the committees all the expenses of their tuition, &c.; and to schoolmasters seeking to perfect themselves in the art of teaching. A course of studies was prescribed, such as is adopted at similar establishments in Europe, and was to extend over a period of three years. A pupil, after having obtained a certificate of fitness, &c. was entitled to preference in employment at schools receiving legislative assistance. The five years were to begin to run from the date of the establishment of the schools in the respective cities. Both committees immediately united in sending to Europe, for the purpose of procuring professors and books, &c., the Rev. Mr. Holmes of the seminary of Quebec, a gentleman of great worth and talents. He brought back with him two professors for the Montreal branch, who immediately opened their school, and came into the receipt of their salaries. They had I believe as many at one time as three pupils, but have none at all at the present moment. No attempt has yet been made to organize the school at Quebec. Mr. Holmes brought back with him some very valuable apparatus and a large collection of books, which are now in charge of the committee. The reason of the failure of this act is obvious. The other Bill, which was passed by the House of Assembly at the same time, having been rejected by the Council, the whole system of elementary education fell to the ground, and persons could hardly be found willing to throw away three years at these normal schools, and pledge themselves to be ready to teach for five more, when there were no schools in existence for them to teach in, and really a very poor prospect of any ever being established. At the same time the Act had great merits; it sought to remedy, and by provisions very suitable as far as they went, one of the greatest vices in the existing system. It, nevertheless, was of course the subject of bitter attack in a province where the merits of measures are no security against attack.

The Bill of 1836, which, as I have just said, was thrown out by the Council, proposed to raise the number of school districts to 1,658, and to grant far greater powers as regarded the management of schools to members of the House of Assembly. The only other novel features in it are, 1st, the

establishment of a superior or model school, in every parish or township, where the population, according to the last census, exceeded 500 souls, to the master of which an allowance was to be made of 50*l.* per annum, upon the majority of the heads of families, at a meeting duly called, having voted a further sum of not less than 20*l.*, so as to raise his salary to 70*l.* He was required, in addition to reading, writing and arithmetic, to teach the grammar of the language of the majority of the inhabitants, and the elements of mensuration and geography, particularly that of North America. 2dly, the provision by which it empowered, though it did not compel, the majority of the inhabitants to tax the district for further support of its schools. The grounds on which the Council rejected this Bill are so fully and so ably stated in their report, that I cannot do better than give their own words. After reviewing the provisions made for education in past years by the legislature, and pointing out their numerous faults as emphatically and oftentimes admitted in the reports of the other House, they proceed :—'Your committee beg leave to state, that, notwithstanding the foregoing reports of the special committee of the House of Assembly on education, concurred in by that honourable House, the number of school districts is by this Bill considerably augmented, and the public expenditure for this object, which has already reached the amount of 150,000*l.*, is very greatly increased, as nearly 40,000*l.* will be required annually, for four years ensuing, to cover the appropriations specified therein. Your committee, while expressing their concurrence in the propriety of assisting education in its progress, at the same time fully coincide with the general tenor of the reports above alluded to, that its support by the people themselves would be more effectual in its results than under the present system of lavish expenditure, which, even for so desirable an end, will ultimately lead to apathy and indifference.

'That the system of management proposed to be continued, and in some points extended, by this Bill, must lead to consequences which your committee cannot but regard as productive of evil. The direction and superintendence of the sums appropriated by this Bill are intrusted, in effect, to the county members of the House of Assembly. This power your committee consider to be an object of extreme importance for good or for evil, as the persons in whose hands it is placed may be influenced, on the one hand, by a pure sense of duty, or, on the other, by the opinion or feeling of party, or by other improper motives. Your committee think it necessary

to point out the powers contained in this Bill, upon which they found their apprehensions that some abuses may result from its operation :

'First. The certificate of the trustees, by means of which the schoolmaster is to be paid, is to be transmitted to the county member. Second. The certificate of the qualification of masters of the superior schools, by means of which they receive their salaries, is to be transmitted likewise to him. Third. The county member is to make the pay-list of the county schools and masters, by means of which the masters' salaries are to be paid by the receiver-general. Fourth. All alterations in the school districts are subject to the approval of the county members, or may in some cases, as provided by this Bill, be made by them of their own authority. Fifth. Large sums of money are to be intrusted to them for distribution, as rewards of excellence to scholars. Sixth. The county member is to demand, recover and receive all sums of money remaining unpaid from former appropriations, for sums for prizes, and for this purpose may require the assistance of the law officers of the Crown. Seventh. The elections of trustees of schools, by heads of families, are to be transmitted to the county member. Eighth. They are not required to support by vouchers their account of monies intrusted to them, as are other persons. Ninth. They are among the number of school visitors. Tenth. Finally, these powers of the county members shall, in case of a dissolution of Parliament, continue to be vested in them until their successors shall be elected, any law to the contrary notwithstanding.

'Your committee believe that your honourable House will see in these provisions sufficient grounds for the apprehension they have expressed, that abuses may result from the operation of the measure. From the experience of past ages, as well as from the appropriations made by this Bill, your committee apprehend that liberality may at last degenerate into prodigality, and the object sought for be as far from attainment as before. Under these circumstances, your committee suggest the propriety of suspending all further appropriations until some general effective system of education can be judiciously planned, and carefully executed, whereby the provincial revenue will be relieved from so heavy an annual demand upon it, and the people be influenced to take a more decided interest in the prosperity of institutions for the education of themselves and children. Independently of these general considerations affecting the merits of the measure, your committee conceive that there are others growing out

of the particular circumstances of the finances of the province which demand their serious attention. They think it necessary to bring to recollection a resolution passed by your honourable House on the 6th of March last, "That it was not expedient to concur, during the present session of the Provincial Parliament, in appropriation of monies to a greater extent than will leave in the public chest a sum equal to the discharge of the sum of 30,519*l.* 4*s.* 2*d.*, advanced and paid out of the funds of the United Kingdom, by his Majesty's order, for the support of the government, and the administration of justice therein, and to other servants of the Crown and individuals as therein mentioned, for which sums no appropriation or provision has hitherto been made.

'That as your honourable House has already concurred in Acts for the appropriation of nearly 12,000*l.* for the encouragement of education in this province, that as no Act providing for the sum of money mentioned in the preceding resolution has hitherto been sent up by the House of Assembly for the concurrence of this honourable House, and as your committee conceive that the state of the provincial revenue (due regard being had to the payment of the sums above mentioned which remain unprovided for) will not warrant the increased appropriation, your committee urge upon your honourable House the propriety of proceeding no further with the Bill intituled, &c.'

It is impossible not to recognize the truth of the greater part of these objections urged by the Council. Although the Bill contained some new provisions of a very valuable character, yet all the radical faults of the old system were left untouched by it, and some, namely, those pointed out by the Council, so aggravated, that the cause of education in the province has, I am convinced, gained much more than it has lost by the rejection of the Bill and the consequent breaking up of the whole system.

Since this period some few masters continued their schools, in the double hope of a new Act being shortly passed, or of being supported by the voluntary contributions of the inhabitants; but both these hopes were soon disappointed, and the schools, with very few exceptions, shut up. Thrown thus on the wide world without resources, and in a time of such excitement, the rebel standard attracted some to a cause which ended in their destruction or expatriation; others have succeeded in getting into new occupations, but very few are to be found still adhering to the old.

The schools, however, in the three towns of Quebec, Montreal

and Three Rivers, and the academies and colleges, which had been the subjects of special grants, continued in operation and received the usual assistance under an Act passed by Sir John Colborne and his Special Council in the spring of 1838.

I will now conclude my observation on the past, by taking a general retrospect of the different attempts at elementary education made by the legislature, and pointing out the causes which led to their failure.

The immediate cause of the failure of the schools under the Royal Institution was the unceasing hostility of the Catholic Church and the French Canadians, on the ground that they were essentially British and Protestant. The absence of every species of popular control distinguished this system from those subsequently adopted by the Assembly. In other respects it had the same miserable imperfections.

The Fabrique Act can hardly be said ever to have fairly come into operation, and only deserves notice as pointing out a fund in every Catholic parish, by which, in the opinion of the French Canadians themselves, education can always be more or less assisted. The system patched up at different times by the Assembly, into what was called the elementary school system, was not merely a vicious and imperfect one, but of late years, especially, pernicious in the extreme. It is obvious that it was mainly recommended to that body by its vast utility as a political machine.

The annual distribution of such large sums of money, and the exercise in other respects of such extensive patronage, were of course convenient to members; but to the school system such an arrangement was pregnant with mischief.

How startled we should be in England at a proposition to vest similar powers in our House of Commons! It would be regarded as almost equivalent to granting the existing members their seats during pleasure.

That the temptations to abuse thus offered were not very strenuously resisted by the House of Assembly in Lower Canada is more than insinuated by what is called the British party. By them the schoolmaster in the Catholic parishes is represented as invariably the most active and accredited organ of the disaffected; and I have been assured by many witnesses that the 'Minerve', an exciting and seditious paper, was in frequent use in the schools as a class-book. This latter assertion is, it may be hoped, unfounded. But, with regard to the former, I have reason to believe that it is to a certain extent too true. Certain it is, at any rate, that the

qualification of loyalty, required of a master in the more peaceable days of the Bill of 1814, was never insisted upon in later bills. Another great evil, to which this system was subjected by its connexion with politics, was its want of permanency. Every alternate year it was liable to expire altogether, or undergo modifications, which, as regarded those embarked in it, in many cases amounted to expiration. The House of Assembly knew well the power which they derived from their common habit of temporary legislation. It was no slight hold to possess in the country, this, of continuing, or at any given time withholding, its sole means of education. It is true that it would be almost impossible to make a system permanent which was to be supported entirely by legislative grants, because the finances of a country like Canada could not always afford such large expenditure. Indeed, the expenditure was not fixed, but was liable to be increased to an indefinite amount. This, however, instead of being an argument in favour of temporary legislation, should be one among many others for seeking out some never-failing source of maintenance by which education should be rendered independent of the wants or caprices of the legislature. No man of character or industrious habits could be induced to abandon other more certain occupations to embrace that of schoolmaster, when he was only certain of two years' employment.

Another very pregnant evil, common to all such systems, was the miserable character of the inspection to which they were subject. The trustees who had the choice of the master, and virtually the entire management of the school, it has been already shown, could themselves rarely write. Their principal relations with him were those of debtor and creditor, or of fellow-partizans in politics. If it were ever necessary to deceive the visitors, nothing more easy. The daily journals of attendance, which latterly the master was obliged to keep, were easily falsified to suit the injunctions of the law, and nobody able or willing to detect the falsehood. The day on which the visitors made their inspection the number of children was complete, and every thing appeared correct. The great desideratum of the master's political usefulness being once proved, the visitors were good-humouredly blind to trifling deficiencies in morals or capacity. L. P. R. Instituteur, whom I have before quoted, speaking of these abuses, says,—'Il y a eu des sindics qui ne se sont pas fait scrupules de prendre l'argent des maîtres pour payer les frais de leurs élections ; ces messieurs avaient les honneurs, et les pauvres maîtres d'écoles payaient pour. Enfin, il y a eu des

visiteurs qui ont fait avoir la paye à des personnes qui n'avaient pas eu d'écoliers pendant un hiver. J'en connais une, qui reçut 10*l.* du gouvernement malgré le rapport de ses sindics, qui déposèrent qu'elle n'avait pas eu plus de sept à huit écoliers durant le semestre, quoique le bill disposât que personne ne recevrait l'allocation sans qu'il eût, de bonne foi, instruit 20 pupilles : cette personne reçut les 10*l.* parce qu'elle était dans la manche du curé de la paroisse.'

But the most fertile source of failure was in the indifferent qualifications and characters of the masters. I believe it may be fairly said, that a schoolmaster's was the worst trade in the country, and that nobody would embark in it who was qualified by character and understanding for any other. 'A common farm servant,' says the Rev. Mr. Alexander, of Leeds, in his evidence before a committee of the House of Assembly, in 1836, 'is allowed 15*l.* per annum for wages, and, in addition, washing, board and lodging. A schoolmaster rarely gets more than 20*l.* per annum, and none of the above-mentioned extras.' It is true that an additional payment of 2*s.* per month from each scholar was contemplated by the legislature, but the poor master rarely got it ; parents either refused the payment altogether, or offered a tithe of it, and, if he declined, had recourse to the easy alternative of removing their children from his school ; and it would not do for him to break with too many children in this way, because he was obliged to have 20 regular pupils to entitle him to the Government allowance. Accordingly, the master was frequently on the brink of starvation, and always dependent on the good will of his parishioners. L. P. R. Instituteur says again, 'Le peu de respect qu'on a pour les maîtres vient aussi en partie de ce qu'ils sont obligés de tendre la main aux habitans, pour avoir de quoi subsister à crédit. Les habitans s'habituent à les entendre supplier, à demander ; ils viennent, enfin, à les rebuter et à les regarder comme des êtres dépourvus de toutes ressources pour vivre, ou, pour le dire en termes plus claires, comme des pauvres nécessiteux, car avec nos habitans ceux des gens instruits qui n'ont pas de terre en partage ne sont guère régardés d'eux.'

Nor was the master's incompetency the whole evil ; even when he was capable and willing, there was no provision for supplying the children with books. Parents objected strongly to the expense ; there was no other quarter to look to, and, consequently, many children went to schools without books.

The indifference of parents was at once the cause and the

effect of some of these evils. Here indeed was action and reaction. As long as they refused to contribute to the support of schools, so long the schools were without competent masters, and the children without a proper provision of books. And, again, while the schools were in such a deplorable state, the parents did not see much advantage in supporting them, but thought their children might be much more profitably employed at home. The fatal notion fully possessed them that it was the duty of the legislature to supply them with the means of education, and that they were conferring a favour in accepting such means.

Such, then, have been the attempts at education hitherto made in Lower Canada; and can it excite wonder that this combination of imperfections and vices should have produced no good result?—that education should have languished under systems, where the masters were illiterate and needy; the supervision careless and dishonest; the school-houses unfit for occupation, and ill-supplied with fuel; the children unprovided with books; and parents utterly indifferent to an institution of which they could not appreciate the importance, and the trouble and cost of which, at all events, they deemed the province of the legislature?

I trust that I have not done injustice to the House of Assembly in this review of their labours. It is extremely difficult to apportion to them their proper share of praise and blame. Much of each they undeniably deserved. In the Bills of 1814–18, &c., up to 1831, their main struggle was to subject the school system to popular control. This principle surely merits well to be an important element in every system of education; and if, on these occasions, such control was left altogether unchecked by the executive, it was, perhaps, because the executive had no great claims upon the confidence of the Assembly. The standing committee of the House laboured diligently and in good faith. They received evidence on all points. They did not shrink from the investigation of alleged abuses, nor, in many instances, from the application of the proper remedies. They saw the evils arising out of the incompetency of masters, and the necessity of providing something higher than mere elementary education, and they suggested the wholesome expedients of normal and model schools. They saw the fraudulent operation of the provision which required a minimum attendance of 20 free scholars before the Government allowance of 10*s.* a head could be touched; and they did away with it, substituting a fixed monthly payment. They saw again the avarice of the people

evade this remedial provision, and they saw clearly how to enforce it, but they had not the courage. They knew that their semi-annual expressions of regret would be of no avail; that appeals to good feelings were utterly thrown away, and that nothing would do, short of compelling the inhabitants to contribute a direct, and not scanty, proportion towards the expenses of the system. They saw all this, but they did not dare to propose so unpopular a measure.

In short, the moment they found that their educational provisions could be turned to political account, from that moment those provisions were framed with a view to promote party rather than education. This was their essential fault; this it was that pervaded and contaminated the whole system, and paralysed all the good that was otherwise in it. This it was that mainly contributed to reduce the province to the deplorable state in which it is at present found. Were a stranger to travel through it, unacquainted with its history, or any part of the voluminous details which I have barely sketched to your Excellency; were he to converse every where with the poorer class of its inhabitants, I am confident that he would return with the impression that no attempt had ever been made in it towards the establishment of any elementary system of education; but, to one who has studied its history, and waded through the mass of laws concerning education, it is at first inexplicable how so many attempts can have been made without producing some sort of result. Go where you will, nevertheless, you will scarcely find a trace of education among the peasantry. While the school-system was in force, there was a very inadequate provision of houses, and, of those that once had existence, some are now in complete ruins, and others the subject of fierce litigation among the neighbouring inhabitants. The sight of these ruins or the tale of these disputes is all that remains to the present of the past.

I consulted several lawyers as to their experience in this matter, and they invariably told the same story. They agreed that there is hardly ever a prisoner or a witness, or a petty juryman who knows how to write; indeed, I have seen noticed in a Montreal paper a presentment by a grand jury, in which six out of the 13 signatures were marks. I consulted one of the heads of the militia department, and he told me, with a play on the word, that the officers under him were generally very experienced *marksmen*. I saw several petitions from parishes, praying for the erection of small-cause courts; I hardly ever saw more than the petitioners' crosses to them;

and it should be borne in mind that these petitions must be signed by at least 100 heads of families in the parish. It may be said that all these jurors and militia officers and petitioners are of necessity grown-up men, and that few could have reaped the benefit of the schools which were only established to any extent in 1829, at which time they were beyond the age of admission. I made, however, particular inquiries on all sides as to whether the rising generation were better instructed, but rarely was any distinction made in their favour. In the very few country places which I visited, I made a point of asking all the children I met whether they could write; the great majority could not write at all, and of those who said they could, most, I found, on pressing, to admit that they could only write their names. This description will not seem justified by the analysis of the schools under the Roman Catholic clergy of the diocese of Quebec, furnished by M. Cazeau, the bishop's secretary, and which will be found in the Appendix (Letter C.) I feel bound in justice to give his statement, but, although I am not qualified positively to contradict any part of it, I cannot help expressing an opinion, formed after much conversation respecting the district, that if a strict inquiry were made as to how many old or young in it could write, or cast up sums, or speak English well enough for ordinary purposes, the number, apparently so respectable on his list, would be reduced to a very small fraction.

Withal, this is a people eminently qualified to reap advantage from education; they are shrewd and intelligent, very moral, most amiable in their domestic relations, and most graceful in their manners; but they lack all enterprise; they have no notion of improvement, and no desire for it. Their wants are few and easily satisfied. They have not advanced one step in civilization beyond the old Bretons who first set foot on the banks of the St. Lawrence, and they are quite content to be stationary. Their utter ignorance of the theory and improved practice of agriculture is painfully witnessed in their cultivation of the rich banks of that noble river. If, instead of learning at their schools to make crosses with pens, they had been taught the most approved principles of clearing, draining, &c., in a word, of farming; instead of starving cattle and minute subdivisions of ill-cultivated plots, no disadvantages of climate would have prevented our seeing by this time thriving gardens, productive crops and healthy herds.

But I have hitherto been only speaking of the male population. The difference in the character of the two sexes is remarkable. The women are really the men of Lower Canada.

They are the active, bustling, business portion of the *habitans* ; and this results from the much better education which they get, gratuitously, or at a very cheap rate, at the nunneries which are dispersed over the province.

But I do not profess to give any thing like the accurate statistics of the present state of education. To arrive at these required more labour and time than any other branch of the inquiry. I had, however, made the attempt, and had sent to every parish and township a series of questions arranged in a tabular form, and so comprehensive, as, if properly answered, to enable me to give the minutest details as to the quantity and character of education now existing, and the local means of which use might be made in building up a new system. The preparation of these tables, blank forms of which will be found in the Appendix, (Letter D.), and the finding out the individuals in each locality most qualified to give information, took much time and were attended, the latter task in particular, with much trouble. By the time I left Quebec, hardly any returns had been sent in, but post after post brought letters from persons whose assistance I had asked in filling up the tables, declining to act with certain other persons with whom I had proposed to associate them for that purpose ; some, on the ground that such persons were bad characters, or that they were too interested to be honest, &c., but most frequently that they were disloyal. A Protestant clergyman wrote to me, indignantly refusing his aid, because his name had been put after that of the Roman Catholic priest, in the list of persons whom I had requested to co-operate in making a return. The greater part of the Roman Catholic clergy in the diocese of Montreal, who took any notice whatever of my circular, gave answer, that they could consent to receive no communications on such a subject that did not come through their bishop. The bishop himself intimated to me, that the education of the Catholic population was the business of their Church, and one with which the Government had no right to interfere. From the bishop of Quebec and his coadjutor, and from all the clergy in that diocese with whom I came in contact, I invariably received the most considerate and friendly attention to importunities which it was necessary not sparingly to address to them.

From the moment it became generally understood that your Lordship's government was coming to a speedy close, a marked difference was observable in the willingness of many to supply information. Some, perhaps, thought that the whole inquiry would from that moment fall to the ground ; but a greater

number, I am persuaded, that there was no longer any authority to enforce their attention to its unpopular demands.

The greater part of the information required in my circular being indispensable before any future system of education can be brought into operation, the office of the commission at Quebec is kept open, and a competent gentleman appointed for the express purpose of collecting, digesting, and reporting upon the returns. Since my departure from Canada, I have received letters from him, stating that the answers come in very slowly; that there is a great disinclination on the part of some to take any trouble in the matter, and a determination on that of others to throw every impediment in the way of the inquiry. His experience strongly confirms my own, that no reliance is to be placed on the zeal or honesty of the localities, and that whatever is to be done, must be done by commissioners themselves visiting every spot, and in person setting their new system on foot. The only accurate details I am able to furnish, and I venture to call them accurate, not from my own knowledge, but from my complete confidence in the gentleman who collected them, relate to the city and suburbs of Quebec. It was a work of no small labour, as he had no authentic guide in his search, and was literally obliged to hunt out schools in every street and alley within that large circle, and as he made the most minute inquiries respecting each. These details are in my possession; they are hardly worth inserting in this report or in the Appendix, but are ready to be handed over, at a moment's notice, to any authorities that may hereafter have a use for them.

The following are the most important facts that they present:—

There are in Quebec 22 boys' and 23 girls' schools, among which latter are not however included those of the Ursuline and Sœurs de la Congrégation, &c., nunneries.

The total number of boys in regular attendance is 1,222, of whom 581 are English and 641 French Canadians. The total number of girls is 977, of whom 365 are English and 612 French. Accordingly, the gross number of scholars in regular attendance is 2,199; of this number only 548 can read and write well enough for ordinary purposes, and only 490 learn both languages, 46 English children learning French, and 444 French learning English. The whole yearly cost of these schools, arising from subscription, public grants and pupils' fees, is about 4,400*l*. Many of the masters and mistresses are utterly incompetent; and it is obvious, that, under a judicious system, twice this number of children

might be brought together at half the cost, in a quarter of the number of schools, and receive an education incalculably superior.

With regard to the means of higher education, persons of British origin have hardly any, while those of French origin have them in too great abundance. It is impossible for an English gentleman to give his son a finished education in the province. If he wishes him to be instructed in the higher branches of mathematics, natural and moral philosophy, &c., he must either send him to Europe or the United States, or avail himself of the more imperfect opportunities afforded in the Catholic establishments of the colony. Political and religious animosities render them very averse to the latter alternative. Some fear what they consider the contamination of republican principles in the States, and all shrink from the expense and separation attending education in Europe. Under these circumstances, they cherish with great fondness the hope of seeing the establishment of a colonial university, on a broad and comprehensive scale. The better class of tradesmen, and the lower grade of merchants, are also without the opportunities of a good commercial education. It is true that there are some private establishments of the requisite description; but neither as regards number or quality are they adequate to the necessity.

I will now explain what is intended by the too great abundance of means of superior education enjoyed by the French Canadians. They have the two large seminaries of *Quebec and Montreal; the former giving instruction to about 350 pupils yearly, and the latter (from which I have received no return) to probably about the same number; and also the colleges of Nicolet, Chambly, *Berthier, *St. Anne de la Pocatière, St. Hyacinthe and *l'Assomption, which, perhaps, between them contain about 1,000 pupils. These are under the sole direction of the Catholic clergy, by whose benevolence they were originally endowed. Many of the pupils are children of common *habitans*. They receive a vastly superior education to the rest of the population, but, after their course of studies is completed, what is their lot? There are no public institutions in the province where their talents can be turned to account. The learned professions are overstocked, and many bring back to the humble home of their fathers a disappointed and discontented spirit; too proud to sink to manual labour, and without the opportunity of rising higher.

With the exception of the seminary of Quebec, I cannot speak from my own knowledge of the character of these

colleges. I had intended to make a personal inspection of them, and had made preparations to commence my journey on the very morning the intelligence arrived from England which rendered it necessary for your Excellency to relinquish the government of the colony. From those in the above enumeration marked with an asterisk I have received returns. These I have also in my possession, and at the disposal of the Government. The seminary of Quebec is an admirably-conducted establishment; the zeal of its members unremitting, and their arrangements in every way most judicious. Mr. Holmes, who is at present at the head of the department of tuition, furnished me with a minute account of its history, management and resources. This establishment has never received assistance from the public chest, but has kept up a constant struggle to make its own resources meet its daily increasing expenditure. This, however, will not long be possible. In a petition, which the seminary presented to your Excellency, they complain that lands in France belonging to them, and yielding an annual revenue of 960*l.* sterling, had been confiscated at the French Revolution; and that, owing to sundry misunderstandings between their agent and the commissioners appointed to examine the claims of British subjects so situated, no compensation had ever been granted to them. The petition concluded with a prayer, that, if there was no further hope from that quarter, they might be permitted under letters patent to acquire and hold in mortmain lands of equal value to those of which they were thus despoiled, subject, however, to the most specific declaration that might be required, that they were held in trust for purposes of education alone.

Similar attempts have been made by several other colleges, and some with success. A Bill to give generally a corporate capacity to all provincial institutions for education was passed by both Houses in 1834, but the royal sanction refused, on grounds very clearly stated by Lord Aberdeen, the then Colonial Secretary. In the course of this statement his Lordship observes, 'that he is not disposed to attach any real importance to the unlimited power which this Bill would confer of holding in mortmain rent-charges of any amount for the objects of the proposed corporations. With the changes which time has introduced in the state of society and public opinion throughout Christendom, have passed away the greater part, if not all, of the solid reasons by which our ancestors were induced to contend against the immoderate growth of ecclesiastical and collegiate foundations; and maxims which

might be just and useful in the densely-peopled states of Europe, possessing territories of comparatively narrow extent, would be altogether delusive if transferred to the continent of North America.' His Lordship concludes by saying, 'notwithstanding these objections, his Majesty cannot so far overlook the importance of the great object to the advancement of which the measure is directed, as to adopt any decision unfavourable to it. His Majesty earnestly trusts that a further Bill will be passed by the two Houses to obviate the difficulties I have pointed out, and in that event his Majesty's assent will be given with the highest possible satisfaction to the present, as well as to any such supplemental, enactment.'

If any danger can reasonably be apprehended from the unlimited power to hold real estate, it would be very easy to prescribe a limit. The Canadians have great faith in the good effects of a general incorporation of educational institutions, as is witnessed by all the Bills from 1818 to 1824, wherein reliance for the eventual maintenance of schools was placed entirely on the charity, which was invited by such safe and encouraging provisions.

As regards the academies and colleges, of which I have been speaking, it is confidently asserted that, if a general Incorporation Act were passed, the greater part, if not all of them, would before long be in a condition to be independent of legislative aid.

The only Protestant endowment in the province is that of M'Gill's college. The history of this institution, the original bequest, the protracted litigation, and, at length, the final decision, are matters as familiar to persons in this country acquainted with Canadian affairs as in Canada itself. The college is not yet open; indeed, the building not yet erected. Its annual income, derivable from houses in Montreal, and money at interest, is about 644*l*. It is obvious that this endowment alone is insufficient for the purposes of a university, to which rank it is the wish of many to elevate this college; and it is doubtful whether the trustees of the Royal Institution, under whose direction it was placed by the will of the testator, would acquiesce in the terms on which legislative assistance ought hereafter to be granted.

I abstain from giving in this place, which might appear the most appropriate for it, the views generally entertained as to the proper means and end of education by the most influential parties in the province, namely, the French and English laity, and the Protestant and Catholic clergy. I think they will be found better illustrated by their contrast or accordance with

the principles I am now about to submit to your Excellency, as, in my opinion, affording the best foundation for a future scheme of national education.

I cannot, however, dismiss this part of the subject without remarking, that, though the picture of the present, as I have, not unfaithfully, drawn it, is gloomy, and in much unpromising, it has still its bright side. The very circumstances of the complete destruction of past systems, and the utter absence of any at the present time, are matters of great good fortune and congratulation, for now a clear field lies open for the future. Infinitely greater difficulties would have been in the way, if the claims of acting teachers were to be first considered, or if a school-system were still in force, interwoven with the affections or interests of any large portion of the people; but, as it is, there are no individuals to compensate, no old machinery forced upon our use; and on the site of the old ruins is ample unencumbered room for the erection of a new and durable edifice.

The great parent evil of Lower Canada is the hostile division of races. Every act of modern legislation bears the faithful impress of this hereditary deformity, and has imparted it with aggravated intensity to every institution or interest with which it has had to deal. Hence the imperfections and one-sidedness of all such institutions. In private life, the intense hatred of the two races does not often show itself in violent collisions, but rather in a rigid non-intercourse. From the moment they are born to the hour that they die they are, to all intents and purposes, two separate nations. But, until these divisions are healed and the people united, until Canada is nationalized and Anglified, it is idle for England to be devising schemes for her improvement. In this great work of nationalization, education is at once the most convenient and powerful instrument. It is a hopeless task to attempt to reconcile the existing generation of antagonists. Their whole life has been one of civil warfare. But, for those that are yet unborn, a more auspicious future may be prepared.

In Canada, the child of French extraction is brought up out of the sight and hearing of the child of British parents. They never meet under the same roof; they are sent to separate schools; and they are told that the reason of this separation is, that the children of the rival schools are heretics, or belong to another nation. They have no common hopes or fears, or pleasures or dangers—none of those kindly associations so easily born out of the familiarities of comradeship, and so faithfully retained throughout the vicissitudes of life. In

short, upon entering into the world, they find no tie to bind them together, and all things around them inviting to hatred and hostility. But how different would be their feelings towards each other, were they brought up at the same schools; were they to play together, and receive the same punishment! They would then form friendships which would soften, if not altogether subdue, the rivalries of after life. A scheme by which the children of these antagonist races should be brought together, were it only for purposes of play, would be preferable to one by which they received a good education apart; but one, by which both union and instruction were assured to them, would be the first and most important step towards the regeneration of Canada.

The first difficulty in the way of such a scheme is, to divest it altogether of political and sectarian tendencies. There must be no room for politicians to turn it to selfish purposes.

The system must be permanent, and not liable to be disturbed by party dishonesty or caprice. No schoolmaster should vote at elections and any interference on his part in politics at any time should be punishable with removal, just as is the case in England with persons holding certain offices under the Crown. It should be made, moreover, impossible to make masterships, as heretofore, the reward to incompetent persons of past political obsequiousness, by refusing that office to any one who has not a certificate from a normal school, or some similar establishment. Such precautions, enforced by an honest and vigilant supervision, would, I have no doubt, rid a new system of the abuse which was perhaps the most fatal among the many in the past.

Another difficulty consists in the solution of these two questions: Is any religious instruction to be given in the future national schools? and, if so, how is it to be so given as to be acceptable alike to Catholic and Protestant? Throughout the United States, it is met by permitting no instruction of this description in the public schools beyond the reading every day, by the master, of a chapter in the Bible, and that without comment. The circumstances, however, of the two countries are different in some important respects. In the States, especially in those of New England, communications are more easy, the population more dense, and almost every sect in every locality provided with its religious teacher, and consequently with the means of obtaining religious instruction, independently of the school. In Canada, the minority in a parish or township have rarely any one to look to for it, except the schoolmaster; nor, indeed, can the majority place

much reliance elsewhere, because the people are so scattered, and the distances so great, that the minister can only bestow that attention on few which all require. Recognizing, therefore, as every Christian must, the indispensable necessity of providing some means of religious instruction for children, and seeing the difficulty of finding them elsewhere than in the schools, it remains for me to show whether they can be introduced there, without at the same time offering violence to the reasonable jealousies of either creed.

There are surely some points, and those neither few nor trifling, on which all Christians agree. The historical parts of the old Testament, the Psalms, the Gospels, and various passages throughout the sacred volume, instilling the principles of Christian morality, are acceptable alike to Catholics and Protestants. Such parts are eminently adapted for children. The dogmatical parts, such as one religion would not trust another to interpret, are eminently ill-adapted for them; therefore, it is precisely those parts of the Scriptures, concerning which, in every way, all religious denominations agree, that are best suited for the instruction of children. Is there any difficulty, then, in collating these parts, or are they insufficient for the object in view? If the book of Bible-extracts adopted in the national schools of Ireland be objected to, on the ground of injudicious selection, let delegates from each persuasion of Christians in Canada meet and agree upon some other selection, in which the same principle shall be observed, namely, that of excluding all controversial points, and in which such grammatical, philological or historical explanations as are deemed requisite shall be arranged at the end of each chapter, and form the limit to which the master's comments shall extend.

If some parts of the Bible are more important than others, they will be found in such extracts. In short, all that is therein should be read over and over again, marked and digested before a child travels beyond. It may safely be asserted that much more of the Scriptures may be so selected than ever will be read at elementary schools, and that the selection, made as it would be under the superintendence of able and discerning men, would be far better than could be expected from the discretion of the ordinary run of village school-masters. Under every system that has been, or ever will be, the Bible has been and will always be, in point of fact, read in extracts. The only difference is, that in some the extracts have been carefully made and separately bound together, and in others made at random and read from a

volume which contained a great deal else, which was not read.

By this arrangement, provision would be made for religious instruction to a certain extent, in which all might participate. However, I see no difficulty in affording different denominations the opportunities of still further and more exclusive religious instruction, which they might enjoy without offending or interfering with each other. The book of extracts, I propose to be the only religious book used in school-hours, unless the board of delegates, to which I have referred, shall be ready to agree upon others of a similarly liberal character. Out of school-hours, that is to say, the first thing in the morning or the last in the evening, any minister or any body authorized in that behalf by the minister and the parents of the children, should be at liberty to teach them the catechism, or any thing else that might be deemed necessary. If confidence to such an extent can be placed by the majority in the master (for I think it should be considered a rule that, as generally as possible, the master should be of the religion of the majority), he can give them this extra religious instruction at either of those times, and the minority will understand that they are not to come till it is over, or to go away before it begins. Where, however, it is given by the master, an extra allowance should be made to him. In Catholic parishes the fabrique can without difficulty supply this trifling sum, and in the townships it must be raised by subscription.

Again, the time which is not fixed upon for this purpose by the majority may be devoted to the extra religious instruction of the minority, if any person can be found to supply it. By this arrangement the majority lose nothing, and the minority are guaranteed something that they would not otherwise get. Every child will have the means of religious instruction, of a sound and unimpeachable character, up to a certain point ; and the children of the majority will continue to have precisely the same opportunity of receiving any further religious instruction, which they have hitherto been in the habit of enjoying, with this single exception, that it must be given either late or early in the day, and not, as heretofore, perhaps, in the middle of school-hours.

There is nothing in this which takes the religious instruction of youth out of the hands of the clergy. It, on the contrary, confirms it to them. The religion, which it teaches in school-hours, is such as they have already approved of, and all beyond is left entirely to their direction.

These views I put forward, much in the same language, in

letters to the Catholic bishop of Quebec, and some of the principal members of the English and Scotch church. The answers I received were any thing but encouraging. The bishop, who spoke as the mild representative of the feelings of his clergy, seemed to find no fault with the proposal respecting the extracts, but directed his chief fears and hostility against the principle which I laid down as the great foundation of my system, namely, the importance of bringing the two religions and races together in common schools. He saw no advantage in such a union—(how few Canadians do, or will own that they do !)—and he clung with fondness to a scheme, which, together with the bishops of Montreal and Sidyme, and in the name of the Catholic Church, he had developed in a petition to your Lordship for the establishment of exclusively Catholic schools for the children of that persuasion.

He also feared the powers, which, in the system of which I drew him a sketch, I proposed to give to the superintendent or chief officer of education. He assumed that this functionary would never be a Catholic, and that he would invariably turn his influence against the Catholic Church. But, in the first place, I cannot see the justice of the assumption; and, secondly, whatever his religion may be, and indeed however illiberal his propensities, I conceive that my system would be so guarded against the possibility of this species of abuse, as to render the attempt much more dangerous to himself than to the religion which he sought to injure.

The hostility of some leading members of the Protestant Church was founded upon the principle which has become so painfully familiar of late years in these educational controversies. It is expressed in the 7th of a series of resolutions adopted at a meeting of some members of that body, a short time after my departure from Quebec, 'That we feel it our duty candidly to avow the conviction, that, on the part of a Protestant Government, no system of education whatever should be termed a national one which is not based on the great Protestant principle of the unrestricted use of the Holy Scriptures'; in other words, upon the most unnational principle of exclusion of nine-tenths of the population. The recognition of this principle would be barren of any useful consequences to the Protestant Church, and it would be a declaration of war against the Catholic Church, whose ministers have been the only men of station among the French Canadians who never forfeited their fidelity to the mother country.

But why introduce the discussion of this principle into a school-system? I am for the unrestricted use of the Scriptures,—my Catholic neighbour is against it; but we are both agreed that, practically, in schools their use must be restricted; and therefore it would really seem very foolish of either of us to forego the advantages of education merely for the sake of asserting a principle which is not in the slightest degree affected by our assertion of it on such an occasion.

I am far from proposing to abandon this principle. In the pulpit, or by the family fireside, I would maintain its truth; but I conceive that its assertion, as proposed by the petitioners, would be attended with no practical advantage, but, on the contrary, with the great practical evil of for ever alienating the affections of the majority of our colonists, and of thwarting the surest means remaining to us of regenerating this unhappy land.

I do not wish to be understood as admitting that these are the opinions of the entire Protestant clergy; perhaps the exceptions are as numerous. The Episcopalian clergy are almost unanimously hostile to my scheme, the Presbyterian divided; but I fancy that I may claim the sympathy of a vast majority of the different bodies of Dissenters.

I hardly developed my views to one of the laity of British origin, who did not cordially enter into them. From this class the strongest support will be given to a liberal scheme. The laity of French origin are strongly averse to the amalgamating principle, and of course still more so to the kindred principle of Anglification, upon which this as well as all future Canadian institutions must be based. Such principles of course shock their feelings of nationality, and they would in all probability for a long time keep back their children from the contemplated schools, were not still more unpopular means resorted to to induce them to conform, namely, taxation. Hitherto unaccustomed to any contributions, the imposition of one even for this purpose would at first be considered a great hardship. But it is idle to dream of giving good institutions to Canada without calling upon its inhabitants for direct pecuniary aid. It is visionary to think of supporting an extensive system of education, simply by grants from the public chest, and equally so to rely on the voluntary sacrifices of a people, who would rather see their children altogether uneducated than set the dangerous precedent of doing any thing for themselves.

To indirect taxation, I found many Canadians not averse; but, upon argument, I found them differ greatly as to what

were the best objects of such taxation: and the more general and better opinion I think was, that such a resource was uncertain and inadequate. However, there are many reasons besides its greater certainty, in favour of direct taxation. There is no waste in collection, and the parties who pay see how their money is applied. The feeling is irresistibly forced upon them, 'If we are obliged to pay, we will have our money's worth'; and however unpopular the schools might be, the tax would soon fill them.

This truth I have shown, by extracts from their reports, to have been fully and frequently acknowledged by committees of the House of Assembly.

The principle adopted in the American systems would perhaps be the best; viz. to require each school district to furnish, by assessment among its inhabitants, an amount at least equivalent to the sum apportioned to it from the public funds. In the towns, perhaps, it would not be unreasonable to tax to twice that amount. After all, this tax, levied as it would be, generally, and according to certain proportions, upon the community at large, would fall far more lightly than did the demand, under former systems, upon parents sending their children to school, of payment at the rate of 2*s.* per month for each.

Supposing that 50 children attended school for eight months in the year, formerly 50 parents would have had to pay 16*s.* per annum a piece, making in all a sum of 40*l.* Now I suppose in such a school district I may safely say there would be 100 taxable inhabitants. Accordingly, each (assuming they were taxed equally) would only have to pay 8*s.* to make up the 40*l.*; or supposing an extra 2*s.* a piece necessary for fuel and books, only 10*s.* or two dollars. It is hardly worth while combating the argument, that the expenses of the education of children should be borne by their own parents, and that they cannot justly be imposed upon those who receive no benefit. They all receive a benefit; and if A.'s child cannot go to school because neighbours B., C. and D., who have no children, will not help to support the school, these same worthy neighbours deserve no public assistance in detecting or punishing the depredations which A.'s child, from want of a good moral education, and the vicious habits engendered by idleness, commits upon their property, or any other outrage he perpetrates against them.

Dr. Meilleur, a member of the House of Assembly, always an active member of the Education Committee, and one of the principal framers of the rejected Bill of 1836, says, in the

'Populaire' of the 10th September 1838, that among other duties of local trustees there was this,—'d'obliger tous les enfans à aller à l'école de leur arrondissement respectif, depuis l'âge de 6 ans jusqu'à celui de 12 inclusivement, excepté dans le cas d'absence en assistant à une autre école, et ce sous peine d'une amende de 5 à 20 chelins, que les parens délinquans seraient dans le cas de payer aux sindics par suite d'une poursuite intentée par eux, et d'un jugement sommaire devant l'un des magistrats du comté. Le montant de telles amendes, s'il y en avait, serait employé à procurer aux enfans pauvres les choses nécessaires à leur école, tels que livres, papiers, &c. &c. L'obligation pour les parens d'envoyer leurs enfans à l'école commencerait du jour que l'école de l'arrondissement où serait leur demeure serait ouverte,' &c.

As regards the character of this proposition, it is just as stringent as mine ; but it has the fault of throwing the entire burthen on the parents, instead of dividing it among the locality. In addition to the payment of half the master's salary, the localities should be made, moreover, to supply the school-house and master with fuel, and to keep both houses in repair. Part of the original expense of building should be defrayed from the public education fund (provided that the gross amount of such payments should in no single year exceed a certain amount, say 2,500*l.*), and the remainder by the locality.

Perhaps a larger assistance might be afforded under this latter head from the education fund for the first two or three years, because it would be impossible to bring the whole system into immediate operation, and many expenses might for that period be saved which must be incurred in a more advanced stage. These savings might with great advantage, therefore, be employed about this first and indispensable preliminary ; and in the course of two or three years every district in the province might be supplied with its schoolroom and master's house.

Again, when the necessary number of houses is built, of course the annual allowance for that purpose will no longer be requisite. But are there no other purposes for which it might be advantageously continued ? For instance, for the formation of district libraries, the collection of apparatus, &c. ; on the system, however, in all cases of simply aiding the voluntary efforts of the district itself.

It is impossible for me, with my limited statistical knowledge, to form any but the roughest calculation of the number of elementary schools at present necessary.

The population of Lower Canada in 1836 was estimated at about 600,000; of this number, perhaps, 100,000 may be said to be inhabitants of the large towns. The average of children between 5 and 14 is generally supposed to be one in five of the whole population. Accordingly, there will be in the rural districts 100,000 children of an age to attend schools. Supposing, then, 1,300 districts were laid down, this would give between 70 and 80 children to each. Of these again, perhaps, 20 would be kept away from some cause or another, such as that they attended a superior or model school, or that they were infirm, or were employed at home in assisting their parents. The remaining 50 would be in regular attendance, and might easily be all well instructed by a competent master.

As it is notorious that there are some districts in the province habitually very poor, and that others are liable to occasional distress, it will be advisable to have a yearly sum to bring to their aid; such sum never to exceed 2,500*l.* in any one year, and not more than 10*l.* to be given to any one district.

In addition to the elementary schools, it will be necessary to have some of a higher description dispersed over the province. Indeed it may be as well at once to adopt for this purpose the provision of the Bill of 1836, by which it was proposed to erect a model school in each county.

The cost of these to the education fund, supposing an allowance of 50*l.* a piece to 40 counties, would be 2,000*l.* per annum. A sum of 20*l.* additional might without difficulty be raised in each county, so as to raise the master's salary to 70*l.*; the allowance of the 50*l.* being in every case conditional on the previous collection of the 20*l.*

These model schools are of infinite importance, because they not only supply the means of a better kind of education to the better classes in each county, but may be made to hold out strong incentives to the ambition of both masters and scholars of elementary schools.

By the masters they might be considered in the light of 40 prizes, to which any one of them might reasonably aspire; and a promotion to which, supposing an equality of qualification, should go by preference to an elementary schoolmaster of the county in which the vacancy occurs.

Again, there might be attached to each model school, to be raised in like manner from the county, a sort of scholarship of the yearly value of 10*l.* This sum, which of course may be increased to any amount that is pleased by voluntary subscriptions, should be devoted towards the maintenance at

the model school of a best boy from each parish, to be elected by the inspector or school visitors of the parish from candidates from each school in it. This boy should intend to devote himself to the occupation of teacher, and after having completed his studies there, should have a certificate of qualification for the 'indigent list' at a normal school, or some academy receiving government assistance.

There are 40 counties in the province, and, on an average, six parishes or townships in each. Accordingly, each best boy would receive a little more than 1*l.* 13*s.* a year towards his maintenance, which would be a consideration to many who at the model schools would be out of reach of their own homes, and which, taken with its consequences, would present an infinitely preferable object of ambition to that of the 10*s.* prize-money of past systems. I am aware how unevenly this fixed reward would operate in different parishes according to the number of school districts in them; and, no doubt, the suggestion is susceptible of much improvement. My object is merely to throw it out as one which will be advantageously kept in view.

Thus there would be in every district a master doing his best to be promoted to the model school, and a rivalry among the scholars to be sent there as 'best boys'. From the model schools these latter would get certificates for the normal schools, and ultimately obtain masterships which would ensure a provision for life.

In the three normal schools 500*l.* per annum should be devoted to the support of the 'indigent list', which would contain 240 members, upon the calculation of parishes above referred to, thus assuring to each such member an aid of a little more than 2*l.* per annum.

The nature of these schools is too well known to require any minute description. Attached to each should be an elementary school, where the future masters should have the opportunity of learning the most approved method of teaching; and I would strongly urge that to each should also be attached a considerable farm, on which the pupils should daily work, and where, under the superintendence of a competent professor, they should make themselves perfectly acquainted with the various modern improvements in agriculture. Hereafter, when the national system is in full operation, it will be necessary to require of every person desiring to be a schoolmaster under it, a certificate of qualification from the normal school or some other, which shall be deemed an equivalent qualification. I should conceive that each of these

three schools to be efficiently supported would require an annual support, at all events, for a long period, of 1,000*l.**

Both normal or model schools ought immediately to be set on foot, because they may both be made to supply one of the first wants of the new system, namely, competent teachers. It is very clear that many of those first appointed, whatever pains may be taken to select them, will be in need of instruction themselves. I would therefore suggest, that all masters of elementary schools should be obliged for a certain period every year to attend the model schools in their county, until they receive a certificate of 'complete qualification' for their duties. With this view there must either be a difference between the times of vacation in the model and elementary schools, or the masters of the latter during their attendance at the former must provide teachers to carry on their business for them. By this preparatory education the competency of future masters would be ensured. They must also, of course, bring to the normal schools, and carry from them untarnished, testimonials of good private character. If at a subsequent period any of them should be guilty of any great immorality, they will be removed by the proper authorities.

The certainty of a salary of at least 30*l.* per annum, besides house and fuel, and the further prospect of promotion to a model school, or to some better supported (from local advantages) than their own, would hold out sufficient inducement to men of character and talent to follow the calling of teacher, which then, instead of being, as now, the worst in the country, would be among the best. Perhaps the erection of new institutions, or the provisions of new laws, such, for instance, as those of a Registry Act, may create duties which the schoolmaster may be the most fitting person in the locality to perform. Here at once there would be a safety-valve for all that waste talent which I have described as finding no outlet under the present system, and endangering society by its irregular outbreaks. Here are at once 1,300 new places of profit to which well-educated men may look for honourable support.

But not only are these incentives held out to masters; their power of doing harm is much abridged; all interference

* The normal schools should, if possible, be in the neighbourhood of each of the three great towns. There is a farm near Beauport, forming part of the Jesuits' estates, now under a lease which will shortly expire, and the remainder of which might advantageously be purchased. This would be a most desirable spot for the normal school in the district of Quebec. It would also be of great utility to attach a farm to each model school. I imagine that there would be little danger of the cost of purchase and implements, &c. being before long repaid out of the produce.

with politics is interdicted, under penalty of removal; their powers of interference in matters connected with religion are strictly limited; their scholars are obliged to bring with them books specified by a superior authority; in short, little is left to a master's mere discretion; his chief care must be to act up to his instructions, and to maintain his character for decency and diligence.

I now come to the provisions for inspection and supervision, in which the vitality of every system of education must essentially reside. However good the scheme may be in theory, with whatever precautions it may be guarded in written books of rules and Acts of Parliament, all is of no avail unless that scheme is watched, and those precautions enforced by an honest and active inspection. The church, and more especially the Catholic branch of it, have long maintained that the education of the people is emphatically their department, and ought by right to be subjected to their immediate control. Heretofore, when that body monopolized all the learning of the times, it was right to concede this claim; but a different distribution of intelligence exists in the present day. The science of education is now more generally known, and a more general interest felt in its advancement. The people every where assert their right to some share in the management of institutions for which they pay, and which are intended for their benefit; and a long experience has shown the advantage of paying well for direct responsibility over confiding to the zeal of unremunerated, and therefore independent, service.

Clerical control and national schools are incompatible in a country where there exist two religions; and it is very certain that the clergy would not be over anxious to carry out a scheme founded, like the one which I have sketched, on the principle of perfect religious equality.

The Catholic clergy are very hostile to any plan which does not give them the nomination of masters, at all events, in Catholic parishes. They assert that there is no other guarantee of their morality. The experience of the class of persons who filled that office under previous Canadian systems, by the appointment of illiterate and partizan trustees, justifies to a great extent their jealousies on this point; but I conceive that, under the management which I have in view, there is no room for their apprehensions.

But I would give the resident clergy a concurrent power with the local trustees in the selection of masters; and in their character of visitors, which they should be *ex officio* in all their parish schools they would have the opportunity of

reporting upon any misconduct which they might discover in them, and forcing an investigation by the proper authorities. That this investigation is not to be honestly conducted under the precautions which I propose to enforce is an ungenerous and unwarranted imputation.

I now come to the question of popular or local control. The past systems, which left the entire direction to trustees elected by the inhabitants, afford a bad example of the consequences of unchecked local control; and if a new system, however superior in other respects, were left to similar management, I see no reason for expecting for it a different fate. At the same time, in matters so interesting to every locality as the proper conduct of the schoolmaster, the proper expenditure of school monies, and, in general, the proper working of the school system, it is clear that they should have some direct and considerable control. Perhaps, however, instead of taking up any more time by abstract arguments, it will be better to give at once a slight sketch of the machinery by which I propose to carry on the government of the national system.

I will begin by assuming that the country is to be divided into municipalities, of an extent suitable to the operation of my plan. In each municipality a certain number (say three) school-commissioners should be elected, in the same manner and at the same time as the other local officers. One of these should go out yearly, there being, however, no restriction as to re-election. Their duty should be to receive the government allowance for all the schools in the municipality, and to distribute their respective shares to the trustees of each district. The legal estate in all the elementary school-houses in their municipality, and in all the real property attached to them, should be vested in them; and they should direct, subject to appeal, the formation of new districts.* They would have to report to the inspector annually upon the financial concerns of the municipality under their management; and also, at the proper time, upon the districts that they have formed, or those that they have proposed and have been objected to, together with the statements *pro* and *con*.

A district being formed, three trustees should be elected by the inhabitants, in the same manner and for the same period as the commissioners. Their duties would be to superintend the financial concerns of the district. They would have to

* There have been so many complaints of the past unfairness of the divisions of districts, that I should recommend, as I have before said, the first arrangements of this description to be made under the immediate superintendence of an Education Commission.

collect the tax, and hold the government allowance, making quarterly payments of both to the master. They would also see that the provisions of the law respecting the repairs and warming of the school-house, &c., were properly attended to ; in short, they would manage the daily concerns of the school. To them, in conjunction with all the ministers of religion in the parish or township, should be intrusted the appointment of the master. Of course the person they select must possess the certificate from a normal or other school ; in short, all the qualifications required by law. Once, or oftener, they must report to the inspector, and a copy of their report be posted in some conspicuous place, or deposited somewhere where all the inhabitants might have access to it.

There should also be a board of school visitors in each municipality, composed of the following members ; the resident ministers of religion, two residents appointed by the inspector, and two annually by the municipality. Their duties should be to inspect the reports of the commissioners and trustees before presentation to the inspector, and make their comments thereon if necessary ; to visit (in a body of three at least) each school four times a year, at irregular periods, and without notice, and to report quarterly to the inspector. A copy of their report should also be placed within reach of the inhabitants of each district. If there is any difference of opinion among the visitors, the same should be expressed in the report.

In the three large towns this management must be slightly different. In each a certain number of public elementary schools (liable of course from time to time to considerable variation) should be established by commissioners elected for that purpose, in the same manner as the other municipal officers. At the same time should be elected (say 19) trustees to have similar powers with those in rural districts, a certain number going out yearly, and others being elected in their stead. The visitors should be the heads or seniors of each religious denomination, or their deputies ; five persons elected by the municipality, and five by the inspector. The same regularity of reporting and publicity, &c., will be required here as in the country.

The province should be divided into three inspectorships, comprising as nearly as possible an equal population, and under the direction of three inspectors appointed by the Governor ; one to reside at Quebec, another at Montreal, and the third either at Three Rivers, or some more convenient place. Their duties should be to receive and collate the reports of all subordinate officers ; to determine, subject to

appeal to the superintendent, all questions relating to the schools in their inspectorship; and to report twice a year to the superintendent, each report to be printed in one or more newspapers most in circulation in that part of the country, and a copy to be sent to each municipality. Once a year, if possible, or, at all events, twice in three years, they should visit every school of every grade, in their inspectorship, receiving government aid. These are offices of so much importance, that in order to attract well-qualified persons a handsome salary must be attached to them. For this purpose, I should think 400*l.* a year to each would be sufficient, with an additional 100*l.* for travelling expenses.

The office of superintendent or chief officer of instruction ought to be one of the highest dignity in the province. He should keep himself (and so should the inspectors), under penalty of removal, completely aloof from politics. He is to be trustee of the permanent education fund, and is to distribute it according to the prescribed proportions He will have to lay down rules as to what books are to be used in schools, the hours of attendance, &c., and to interpret the Act under which the system is created. His decisions should be binding in all matters relating to school discipline. He should receive the reports of the inspectors, and lay them, together with his comments on them, as well as his observations on the general concerns and condition of education in the province, annually before the legislature. This report, like all the others, should receive the widest possible circulation. He should reside at the seat of government, where an office and secretary should be found him, and should have a suitable salary, say 800*l.* a year. As the working of the system will materially depend upon this officer, it is needless to urge the necessity of a discreet selection, and of the most careful accuracy in defining his powers. Both he and the inspectors should hold office during good behaviour. There is some difficulty in determining the authority by which their alleged offences should be tried, and by which, in case of conviction, they should be removed. Perhaps, if a new court of appeals is established, on the principle which I understand is in your Lordship's contemplation to recommend, such would be the most fitting tribunal to adjudicate in these cases.

Such, then, my Lord, are the principles on which, in my opinion, a national system of education for Lower Canada should be based, and such the rough outline of the machinery by which it should be worked. I have made no attempt at originality, but have constantly kept in view, as models, the

systems in force in Prussia and the United States, particularly the latter, as being more adapted to the circumstances of the colony. The office of inspector is somewhat new to that system, and provides, I think, against its most serious defects, but almost every other suggestion which I have made is vindicated by the most successful experience in one or the other of those countries.

From a system so founded and so managed, I anticipate the happiest results. It would be one into which religious dissensions could not find their way, and which political men would have no power to pervert. It would impress upon the people the important truth, that education was as much their own concern as that of their rulers. It would forward energetically the great national objects we should have in view,—uniting the two races and Anglifying the Canadian. It would be provided with teachers well qualified in station, character and acquirements ; and pursuits of utility would be encouraged in forms at once popular and practical. A general feeling of emulation would be created, both among masters and pupils, by the prospect of honourable and substantial distinction. Its faithful administration would be guaranteed at once by the interestedness of its subordinate officers, and the disinterestedness of the superintendent and inspectors ; but, above all, by that best of human securities, the perfect publicity of its minutest details.

That such a system will at first be assailed by a great many objections, I will admit. By the great mass of Dissenters and by nearly all the British laity, I believe, it will be fully approved. And, indeed, to each of those parties, among which its opponents will be found, there will be many parts of it highly acceptable. All religious denominations, for instance, will approve of its guarantees against political contamination, and politicians will not find fault with its being placed out of the control of the Church. Of course, a variety of exceptions may be taken to the details of my scheme, particularly to my imperfect development of them, but by these I do not profess to abide. I thought some such sketch as I have given was necessary for the illustration of it, and I am quite ready to believe that, in order to render it practicable, many important alterations must be made.

If, however, the unpopularity and not the intrinsic merits of measures is to be a consideration now, I should conceive that the trouble of legislating for Lower Canada might as well be spared. Unless the principle of Anglification is to be unequivocally recognized, and inflexibly carried out, of course

all such proposals as mine must fall to the ground; but, if it is to be recognized and carried out, where will its popularity be found? Is it not, in other words, waging direct war with the dearest prejudices and fondest hopes of the vast majority of the people? and can any caution, in the way of half-measures or of delay, deceive them as to the object, or disarm or even mitigate their hostility? It is not without feelings of sincere aversion that those who avow liberal principles of government can so far abandon them, as to entertain propositions like these for trampling upon the opinions and feelings of the majority. But, yet, in Lower Canada, original blunders and continuous mismanagement have produced such desperate diseases as to leave none but desperate remedies. The colony will not be worth our keeping unless it is Anglified. The French majority detest and will resist such an attempt. If made, it must be made at once, and vigorously,—openly avowed and steadily pursued. Every new institution given to the country must be subservient to this end, which, the sooner accomplished, the shorter the struggle, and the earlier the recompense; but, in the painful interval, popularity must not be hoped for, conciliation not attempted.

Such considerations alone have induced me to submit suggestions, which I feel sure, under other circumstances, would be repugnant to your Excellency's generous disposition and liberal principles.

A question still remains—'How is this system to be supported?' The annual demand on the permanent fund for the maintenance of the elementary school-system, when it is in full operation, would, on the foregoing calculation, be about as follows:—

	£.
15*l.* a piece towards masters' salaries to 1,300 schools	19,500
Towards building houses	2,500
Towards relieving poor districts	2,500
50*l.* a piece to 40 model schools	2,000
Three normal schools, including 500*l.* between them for 'indigent list'	3,000
Three inspectors, including travelling expenses	1,500
One superintendent, secretary and office	1,000
Printing, &c. in different departments	500
	£.32,500

The elementary schools in the three great towns are still unprovided for. Considering their large population, and that

there every child would be within reach of the schools, a less sum than 1,000*l.* a year to each of the cities of Quebec and Montreal, and 500*l.* to Three Rivers, would not be sufficient. Before, however, either should be entitled to its grant, it should have raised, by taxation, a sum of twice that amount. This would raise the annual charge on the education fund to 35,000*l.* The cost to the inhabitants, to be raised by tax, and added to the above sum, would be, in town and country,—

	£.
Towards masters' salaries in elementary schools.	24,500
Ditto . . . . in model . ditto .	800
Towards scholarships	400
	£.30,000

Great as these two amounts appear, they are not under either head as large as would have been required to carry out the provisions of the rejected Bill of 1836. The sum to have been supplied from the public chest, for the support of elementary model and normal schools, would have amounted to upwards of 40,000*l.* per annum; and the following sums would have been raised from the inhabitants by assessment, or by monthly or irregular payments.

The country was to be divided into 1,658 districts. Now, supposing, that in each school there was only the minimum number of children (namely 20) in attendance for eight months only in the year. Each of these being required to pay 2*s.* per month, the aggregated payments under this head, arising from the inhabitants, would have amounted to 26,528*l.* This is supposing, as I have said, that only 20 children were in attendance at each school, or 33,160 in all; whereas the number of children throughout the province, between 5 and 14 years of age, is calculated at about 100,000.

In addition to these monthly payments, localities were made to contribute 2,000*l.* a year as their share towards the salaries of masters of model schools. Their share in the cost of building school-houses, was to have been 2,000*l.* a year at the least, I believe; and estimating the cost of books at only 72*l.*, there would be coming on the whole from the pockets of the inhabitants, in respect of elementary education in the rural districts alone, a yearly sum of 30,600*l.*; whereas under the system I propose, the inhabitants of the same districts would be only taxed to the yearly amount of 25,000*l.* There is this further difference, I think, in favour of mine, that the raising of the 30,600*l.* fell entirely upon, at most, 33,160

parents, whereas my 25,000*l.* will be divided probably between 200,000 tax payers.

Under the system, then, proposed by the Bill of 1836, 33,160 children might receive a very miserable education at a cost of about 71,000*l.* per annum; under the system I propose, at least twice that number of children may receive a very excellent education at a yearly cost of only 57,000*l.*

Still, however, the question remains unanswered, from what source is a permanent education fund of 35,000*l.* per annum to be raised? The only means towards it at present available to the province, are the yearly revenues of the Jesuits' estates and the 20,000*l.* belonging to the same fund, which are, or which ought to be, in the hands of the receiver-general. The 20,000*l.* if well invested, might produce 1,200*l.* a year; and the estates under good management, to yield an available income, shortly, of 3,500*l.*; hereafter possibly, of 5,000*l.* or 10,000*l.** Still, 30,000*l.* a year, remains to be permanently secured.

The only sources to which to look for this, are probably the following:—

1st. A compensation from the Home Government for the Jesuits' barracks, which in point of justice belong, of course, just as much to the education fund as any other part of these estates. This though no more than an act of justice, would be felt as one of grace.

2d. The clergy reserves. There is no doubt as to the almost universal popularity of such an appropriation of this much-disputed fund. The entire Episcopalian clergy, and half the Presbyterian, would be violently opposed to it; but I think I may say, that with very few exceptions, every one else in the province would hail it as a happy expedient for at the same time putting an end to a great national quarrel, and conferring a great national boon.

It is impossible to estimate with any exactness the value of this concession to the education fund; but perhaps it may be safe to say, that, in addition to what may be permanently secured from the above and other sources, annual appropriations of from 20,000*l.* to 25,000*l.* will still be needed from the provincial treasury. This is much to be regretted, but there is no alternative. Complete independence of the legislature is of course unattainable; but it is to be hoped that, if that body is reconstituted or reformed, the cause of education

* Mr. Dunkin, in his report, which I had not received when the above was written, estimates the probable future income of the Jesuits' estates at a far higher amount.

need not henceforth apprehend danger from the indifference or dishonesty of any of its component parts.

In his annual report, the superintendent will lay before each branch of the legislature an account of the expenses of the system, and, after meeting them as far as he is able by its 'permanent funds', will apply to the province for the remainder. If this is refused from any capricious motives, the system must fall to the ground; but such a refusal would argue a state of things in which it would be impossible for education or any other useful institution to thrive.

I have as yet said nothing of the encouragement of superior educational institutions. The best system for adoption respecting these would perhaps be one closely resembling that in force in the state of New York, namely, to distribute annually a fixed sum between all the establishments of this grade in the province (with certain provisions as regards legal incorporation, property and tuition) in proportion to the number of pupils attending each. They should have been incorporated in accordance with the provisions of a general incorporation law, and their permanence thereby secured. They should have been endowed to a certain reasonable extent, and their teaching should be of a certain character, so as to give them the rank of academies or colleges. They should be subject to an annual visitation of an inspector, and be required to conform to such purely literary injunctions as might from time to time be specified as conditions of the public grant. One invariable condition should be the teaching of English, in a manner satisfactory to the inspector.

An amount of probably from 4,000*l.* to 5,000*l.* per annum would be necessary to serve as an incentive to the erection and endowment of such institutions. A portion of this sum might with advantage be laid out in the shape of a contribution towards academies, which should themselves raise a like sum, (50*l.* for instance) for the purchase of books and apparatus. It would be desirable also, in consideration of the lamentable deficiency of the means of superior education within reach of the higher and middle classes of British origin to devote 250*l.* per annum towards the support of each of two large English grammar or public schools at Montreal and Quebec, upon a like sum in each place being first of all provided by voluntary contribution. These schools, however, should be open to all, the teaching being entirely in English. The same restrictions as to religious instruction should be in force as in the elementary schools. The trustees should be chosen by the subscribers out of their own body. The nomina-

tion of the masters should originate with them, but be subject to the approval of the superintendent; and, in case of disagreement, the Governor should decide.

Nor would this annual grant of 5,000*l.* for superior education quite equal those made for a similar purpose for the last five years, the average of which was about 5,200*l.*

The claim upon the permanent fund would now, for the entire support of every species of education, amount to 40,000*l.* per annum.

I have before noticed the great anxiety of the higher class of colonists of British origin for the establishment of a university. I am fully sensible of its advantages, but will abstain from saying more on the subject than that its character and means of support must depend materially upon the nature of the future government of Canada. If any union of the British North American provinces is effected, a university, jointly endowed by them, might be erected on a most comprehensive scale, embracing faculties of arts, theology, law, medicine, &c. Its proper seat would seem to be Quebec.

In conclusion, if any system such as I have sketched should ultimately be adopted and confirmed by law, I should strongly recommend that it should gradually be put in force by a board of commissioners somewhat similarly constituted to that of the board of Poor Law Commissioners in this country.

The following would be among their earliest duties. To set the normal and model schools in operation, and at once open the elementary schools on the new system in the three great towns; to lose no time in dividing the country into districts, either personally, or by means of assistant commissioners, visiting every locality, and superintending the necessary arrangements; and to appoint two committees, one composed, as before suggested, of clergymen of different persuasions, to prepare a book of Bible-extracts; and another composed according to their discretion, and under their own immediate control, of persons whose province it should be to draw up a list of books fit to be used in the elementary, model and normal schools, and also a series of rules and regulations for their management, in strict conformity with the provisions of the new Act.

Until the system should be sufficiently advanced to require the aid of the inspectors and superintendent, this commission would of course continue to sit and exercise their functions.

Such, my Lord, are the principal suggestions for a future plan of education for Lower Canada, which the past history and present condition of that country, and the analogies of

similar experiments in other countries, in my opinion, combine in recommending.

In laying them before your Lordship, I am fully sensible of their many imperfections.

I have, &c.
(signed) *Arthur Buller.*

JESUITS' ESTATES.

REPORT of Mr. Dunkin, the Secretary to the Commission. (Extract.)

Cap. II.

Outlines of the History of the Jesuits' Estates as an Educational Endowment in *Lower Canada.*

It would neither be useful nor interesting to recount the dates at which the various properties at any period held by the order of Jesuits in Lower Canada originally came into their possession, the names of the individuals who gave, bequeathed or sold them to that order, the motives assigned for the gift or bequest of the greater part, and the transfers or alienations by the Jesuits of particular portions of them. For the purposes of the present report, little more is required than a brief outline of the proceedings which have taken place since the conquest in regard to these possessions, their administration, and the uses to which the revenues drawn from them have been put.

At the period of the cession of Canada, in 1763, the order of Jesuits was in possession of a number of seigniories and other properties in different parts of the province, of great extent and considerable value. They had houses of residence in Quebec, Three Rivers and Montreal; their residence in Quebec being the large building now used as a barrack in the upper town, and still one of the most extensive buildings in Lower Canada. In this building was their chief residence and college. Their other property was scattered over the province; four seigniories, of considerable size and value, besides a fifth of little or none, and several valuable tracts of land, in and near the city of Quebec, belonging to them, within the district of Quebec; two of the largest seigniories in the province, and a great part of the town of Three Rivers, being theirs in the district of that name; and a small property in the city of Montreal, with two large seigniories (one of them, however,

only held in trust for the Iroquois Indians), being in their possession in the district of Montreal. Of these properties, the greater part had been given or bequeathed to them; a comparatively small portion had been purchased. The whole had been confirmed to them in mortmain, by letters patent of the French King, his governors or intendants in the province. In the official documents by which their title was thus confirmed, the object of the endowment was in almost every instance stated to be the maintenance of their college, and the instruction of the youth of Canada by their order. The original bequests or deeds of gift, in many instances, gave other motives; the conversion of the heathen, friendship for the Jesuits, &c. The royal letters patent, however, explained the whole as above stated; the Jesuits appearing to have requested this form of confirmation, on account of the tenor of their vows of poverty, and the consequent necessity of their holding all their possessions under this pretext.

In the articles of capitulation by which Canada was temporarily ceded by the French General, an attempt was made to introduce a guarantee for the continued maintenance of this order in the province, and the perpetual possession by them of their estates. This proposal of the Marquis of Vaudreuil was, however, set aside, and no such guarantee given or implied, either in the capitulation or in the treaty of 1763, by which the country was finally ceded to Great Britain.

Notwithstanding this refusal, however, to recognise the order, the Jesuits remained in the undisturbed possession of most of their property for many years. A part of their college building in Quebec was taken possession of by the government, as a public storehouse, immediately after the conquest, and continued to be used for this purpose till 1776, when the greater part of the building was taken possession of as a barrack, a use to which the whole building has been devoted since the year 1800, when the last surviving member of the order died. A part of the mission-house, in Montreal, was also occupied as a public prison, before the death of its last inmate, and the whole building was converted into a prison on that event. In the year 1774, royal instructions were given to the Governor for the suppression and dissolution of the order of Jesuits; 'all their rights, privileges and property' to be vested in the Crown, 'for such purposes as the Crown might hereafter think fit to direct and appoint.' The royal intention, however, was at the same time declared to be, 'that the present members of the society, as established at Quebec, should be allowed sufficient stipends and provisions

during their natural lives.' In point of fact, the Jesuits were allowed to continue in the possession and management of their productive estates, and to draw from them the 'stipends and provisions' promised in these instructions in lieu of them. Father Well, the last survivor of the Jesuits resident in Montreal, administered the properties in that district till his death, and Fathers De Glapion and Casot (the latter not himself a Jesuit) those in the district of Quebec, till the death of the former. Shortly after this event, viz. on the 8th of March 1800, the Crown took unreserved possession of the estates, and they have since remained under its management.

The suppression of the order of Jesuits in France took place in the year 1762, and in Italy in the year 1773. The possessions of the order were, in the former country, at once devoted to the support of institutions of education; in some cases, to the support of the colleges originally founded by the Jesuits (but then placed under other government); in other cases, to that of schools and colleges which had never been under their control.

From the year 1770 to the year 1803 a claim was under discussion, urged by Lord Amherst, for a royal grant to that nobleman of these estates, or the greater part of them, as a mark of royal acknowledgment of his services in the reduction of Canada. After repeated references to the Privy Council and to the Law Officers of the Crown, both in England and Canada, and more than one order in council enjoining the Governor of Canada to issue, or the Law Officers to prepare, a deed of gift, conferring them, with one or more reservations, on his Lordship, the project was at last abandoned in 1803, after the death of the original claimant; and the claims of his son and heir were met by a grant voted him by the Imperial Parliament in that year. In the course of these discussions, a commission was issued by Lord Dorchester, then Governor of Canada, on the 7th of January 1788, in obedience to an Order in Council, to inquire into the extent, value, tenure, &c. of the estates, with a view to deciding whether and by what means the proposed grant could be made. The report of the commission, though far from complete in point of information, and indeed not even unanimous, was altogether in favour of the grant, a result which was to have been expected. The report of the Attorney and Solicitor-general of Canada, made at the same time, was to the same tenor. Subsequently raised objections, however, defeated the project.

During this period several attempts were made by parties

in Canada to obtain from the Crown a grant of these estates, for the support of education within the province.

In the year 1787, the legislative council of the province, on the suggestion of Lord Dorchester, then Governor-general, appointed a committee to inquire into the means of advancing education, &c. The report of the committee was made in 1789. For the present purpose, we have to do only with so much of it as relates to the Jesuits' estates. In a letter from the Roman Catholic Bishop of Quebec, dated November 18, 1789, addressed to the committee, and published in their report, that prelate urged the propriety of again devoting the college-building in Quebec to educational purposes, of endowing the new institution to be thus opened with these estates, and placing it, when thus endowed, first under the control of the surviving Jesuits, for their lives, and then under that of the Roman Catholic Bishop of Quebec, as the head of the Catholic Church in the province. The committee in their report, dated 26 November 1789, recommend that a portion at least (and it is to be inferred a considerable portion) of these estates be given as an endowment, to aid in the erection of a proposed 'Colonial College', of the constitution of which they present an outline. According to this scheme, the college was to have been constituted on the most liberal principles, Catholics and Protestants respectively to provide each their own system of religious instruction for the students of their own communion; the corporation to consist of an equal number of members of each communion, and the visitation to be vested in the Crown.

On the 31st of December in the same year (1789), Father de Glapion, the titular superior of the dissolved order, proposed by letter, on his own part and that of his three surviving fellow Jesuits, to make over the estates 'for the benefit of the Canadian citizens of the province of Lower Canada', with the reservation for themselves of a residence within their former dwellings, and a life pension of 3,000 livres each per annum, and on condition that the estates so made over should for ever be applied to educational purposes under the direction of the Roman Catholic Bishop of Quebec.

Early in the year 1793, during the first session of the Provincial Parliament of Lower Canada, created by the constitutional Act of 1791, a petition, signed principally by persons of British origin, was presented to the House of Assembly from the city and county of Quebec, praying the House to urge upon the Crown the propriety of giving up the estates to the disposal of the provincial legislature, for the

support of education in the province ; a destination, it was urged, which would, more than any other, be in accordance with the design of those who endowed the order with these possessions, and the spirit of the letters patent of the French King, which confirmed them to the order, for educational objects only.

On the 11th of April of the same year, the House adopted an address to the Crown, embodying the substance, and urging the prayer of this petition. No answer was given to this address ; the project of granting the estates to Lord Amherst being the one then favoured by Government.

During the session of the Provincial Parliament held in the year 1800 (the year in which the final occupancy of the estates by the Crown took place), the House of Assembly again took up the subject, and voted an address to the Governor, praying his Excellency to communicate to the House certain documents, 'to facilitate the investigation of the claims and pretensions of the province, on the Jesuits' College converted into barracks, and to the estates of that order, &c.' His Excellency's reply informed the House, 'that in consequence of the address of the House of Assembly, of the 11th of April 1793, the claims of the province had been considered by his Majesty in Council, and that the result of that consideration had been an order to take possession of those estates for the Crown. That if, after this explanation the House should deem it advisable to investigate, they should have access to the documents required ; but any further application on the subject might be inconsistent with the accustomed respect of the House of Assembly for the decision of his Majesty, on matters connected with his prerogative.' No further action was had in consequence of this reply on the subject for several years.

Since the final occupation of the estates by the Crown in 1800, their administration has been vested by a series of commissions ; first in a board of five commissioners, holding office during pleasure ; some years afterwards in a board of eight, and then in a board of six ; and, lastly, in a single commissioner, the Honourable John Stewart, who still holds that office, and who had been a member of the board for several years before he became sole commissioner. The successive changes which have taken place under the several commissions which have been issued, and their dates, are not material to the purpose of the present report.

The revenues of the estates during the interval between this period and the year 1831, (when they were surrendered

to the Provincial Parliament for the support of education), were appropriated by the local executive as a part of the property of the Crown, and no report as to the mode of their application was made public.

In 1812, the legislative council voted an address to the Prince Regent, praying for the devotion of these estates to the support of education. The address was sent down to the Assembly for concurrence; but, owing probably in a great degree to the pressure of business and the excitement growing out of the war with the United States, then just commencing, it was not then acted upon. The address does not appear to have been noticed by the government; in part, doubtless, from the same cause.

From this time till 1824, little was done on this subject. In the session of 1824, however, a special committee of the House, appointed for the purpose, submitted a long and elaborate report, setting forth the proceedings connected with the suppression of the order of Jesuits, both in France and Canada, and urging the unreserved devotion of the estates once possessed by them to educational objects, in the latter as well as in the former country. The report was concurred in by the Assembly.

In the session of 1825–6, the discussion of the subject was again resumed, and another special committee named, to inquire into the kindred topics of the Jesuits' estates and the state of education in the province. In accordance with the report of that committee, it was resolved, on the 20th of March 1826, to address the Crown anew, in behalf of the claims of the provincial parliament to the revenues of the estates for the advancement of education. To this address no answer was made.

In 1827 a variety of complaints urged by the House of Assembly of Lower Canada were laid before the Imperial Parliament, the disposition and management of the Jesuits' estates being among the number of 'grievances' complained of. The Canada committee of the House of Commons, in 1828, reported in favour of the application of the proceeds of the estates 'to the purposes of general education'.

In the month of March 1831, resolutions were again adopted by the House of Assembly of Lower Canada, complaining, among a number of other things, of the continued withholding of the Jesuits' estates from this use and from their control; and another address to the Crown was voted, embodying all these complaints. A despatch of Lord Goderich (then Colonial Secretary), dated 7th July 1831, and containing

the reply of the Government to the demands urged in this address, concedes, at least on this point, almost all that the Assembly had demanded. By this despatch, the future revenue of the estates was placed at the disposal of the provincial legislature for the support of education, with a recommendation only to the House, in favour of the continuance of a provision to those 'scholastic establishments' (the grammar schools of Quebec and Montreal) which had up to that period been sustained by its means. In this cession of the estates, however, the Jesuits' College was not included, except upon condition of the erection by the province of 'adequate barracks', for the accommodation of the troops which had been for so many years quartered there.

A number of other measures were proposed to the Assembly by Lord Goderich, for the settlement of the controverted questions of the civil list, &c., out of the agitation of which the address of the Assembly had had its origin. To these the House did not assent. The surrender of the Jesuits' estates alone was ratified by a legislative enactment of that year, the 2d Will. 4, c. 41. By this law it is enacted, that from and after the date of its passage, 'all monies arising out of the estates of the late order of Jesuits, which now are in or may hereafter come into the hands of the receiver-general of this province, shall be placed in a separate chest in the vaults wherein the public monies of the province are kept, and shall be applied to the purposes of education exclusively, in the manner provided by this Act, or by any Act or Acts which may hereafter be passed by the provincial legislature, and not otherwise.' The Act then proceeds to appropriate, for the next year only; *i. e.* till October 1, 1832, the following sums :—

For the expenses of management of the estates :		
The commissioner's salary . .	£.180 sterling.	
Allowance for clerk hire . .	90	
Allowance for contingencies . .	80	
	——	350
For the royal grammar school in Quebec :		
Master's salary	£.200 sterling.	
Allowance for house rent . .	90	
	——	290
For the royal grammar school in Montreal :		
Master's salary	£.200 sterling.	
Allowance for house rent . .	54	
	——	254

In all, 894*l.* sterling, or 993*l.* 6*s.* 8*d.* currency; the 'pound sterling' of the law being that in which the receiver-general's accounts are kept (9*l.* sterling equalling 10*l.* Halifax currency), and not the true 'pound sterling' of English money. The above amounts were all copied into the Act from the estimates proposed, and are the amounts which had for some time previous been allowed from the estates for those purposes respectively.

The Act, of which the above is an outline, was adopted by the House on the recommendation of a special committee, to which so much of Lord Goderich's despatch as related to the estates had been referred. That committee accompanied their Bill with an explanatory report, which was adopted by the House, and to which I shall have occasion hereafter to refer more than once. On the subject of the retention of the Jesuits' barracks, this report proposes to the House no immediate action, but expresses the confident anticipation that 'the justice of his Majesty's government' will ere long complete the restitution of the estates, without insisting upon a condition, a compliance with which on the part of the province would exhaust the revenues of the estates for several years.

Appended to the report of the committee on the Journals of the House is an abstract (drawn up apparently by some member of the committee) of the accounts of the estates for the 31 years from 1800 to 1831, as reported to the committee on this occasion. It is not easy to reconcile some of the statements made in this abstract with the contents of other papers embodying official information on the subject. I was not, however, able to give to this part of the inquiry a sufficient amount of time, to feel warranted in positively asserting any contradiction between the two authorities, or in attempting to discuss at length the points on which they seem to differ.

From this table it would seem that the total amount received into the hands of the treasurer of the estates * or

* The receipts of the estates (after the deduction of an allowance of 10 per cent. to the agents for collection) were deposited under the earlier commissions in the hands of a 'treasurer of the Jesuits' estates', for safe keeping and disbursement. This office was for a number of years held by the receivers-general of the province; first, by Mr. Henry Caldwell, and on his death, by his son, Sir John Caldwell. After the discovery of Sir John's defalcations (from which, as will be seen presently, the revenue of the Jesuits' estates as well as the general revenues of the province suffered) the treasurership of the Jesuits' estates was held by one of the commissioners, the Hon. H. W. Ryland. Shortly after the appointment of the Hon. John Stewart as sole commissioner, the revenues of the estates

receiver-general for the 31 years between 1800 and 1831 was 49,583*l.* 14*s.* 3*d.* currency, being on an average not quite 1,600*l.* currency yearly, for the entire period. Of this sum there had been expended during the same time upon the management of the estates, 8,652*l.* 2*s.* 4*d.*, being at the rate of nearly 17½ per cent. per annum upon the amount received by the treasurer or receiver-general. This sum evidently does not include the 10 per cent. on all collections made by the agents, and deducted by them in the first instance from the gross receipts, without passing through the treasurer's or receiver-general's hands. Besides this 8,652*l.* 2*s.* 4*d.*, a further sum of 4,732*l.* 9*s.* is returned, as having been expended upon 'repairs' of roads, mills, &c., making rather more than 9½ per cent. on the amount passed through the treasurer's hands. Assuming these figures to be correct, the entire sum expended in agent's allowance, expenses of management and repairs upon the properties for 31 years, amounted to more than 35 per cent. on the gross collections made in that period by the agents.

Of the 36,199*l.* 2*s.* 11*d.* remaining after these deductions, the same account shows a sum of 13,169*l.* 7*s.* 6*d.* (a little more than one-third) to have been for educational purposes. Of this sum, 780*l.* was a grant in favour of the M'Gill college, and all or nearly all the rest had been expended upon the royal grammar schools of Quebec, Montreal and Kingston (Upper Canada). The allowance to these schools commenced in 1817, and that to the Kingston school had been given up some years before 1831.

Among the remaining items of disbursements appears a charge of 9,793*l.* 2*s.* 11*d.* for 'repairs of Protestant churches', all or nearly all this sum having been expended upon the repair of the Protestant cathedral church in Quebec. Another charge upon the estates (sanctioned by a despatch of Sir George Murray, dated June 2, 1828), is to the amount of 984*l.* 3*s.* 2*d.* for the salary of a clergyman of the Protestant Episcopal Church (Rev. Mr. Sewell), as chaplain of the church of the Holy Trinity in Quebec.

On the subject of the balance in the receiver-general's hands at the time of the surrender of the estates, the account given in this table is not reconcilable, so far as I can see, with that given on the books of the receiver-general. The latter (as may be seen from the accompanying document marked (E.) state it to be 8,020*l.* 16*s.* 3*d.* sterling, or

were again deposited with the receiver-general, and the office of treasurer of the estates was abolished.

8,812*l.* 0*s.* 3¼*d.* currency. This sum, I presume, is the correct one.

The provisions of the 2d Will. 4, cap. 41, were in several particulars disregarded or contravened. The monies received from the Jesuits' estates were never placed by the receiver-general in a separate chest, as required by the law, but have continued, as before, to be deposited with the other public revenue of the province, a separate account only being kept to show their amount. The clause prohibiting the expenditure of any part of the balance at any time accruing from the Jesuits' estates for any other than educational objects was also set aside by the transfer on the 22d of September 1832 (by order of the governor, signified in a letter from Colonel Craig, then civil secretary, to the receiver-general), of 7,154*l.* 15*s.* 4½*d.* currency, from the amount credited to the Jesuits' estates, to the general revenues of the province. The circumstances under which this transfer was made, and the defence set up for it (a passage in Lord Goderich's despatch of 7th July 1831), will require fuller consideration in another part of this report. I shall there endeavour to show, that however undeserving of blame the order may have been, it was clearly a contravention of the law, and that the transfer in question ought accordingly to be reversed, and the 7,154*l.* 15*s.* 4½*d.* currency again set down as belonging to the educational fund of the province.

The appropriations made by the above Act of 1832 were, as has been stated, for one year only; no subsequent enactment has been passed on the subject, so that the revenues of the estates have been accumulating in the hands of the receiver-general since October 1, 1832; the allowances to the two grammar schools ceased at that date. The expenses of the commissioners' office have continued to be paid to the same amount as before; not, however, as before, by warrant drawn in due form upon the receiver-general, but by the commissioner himself, out of the monies received by him, before paying over the balance to the receiver-general. This course is defended by a reference to the terms of the commission by which that officer was appointed, and which empowers him to pay out of the receipts of the estates all necessary expenses of collection, &c. It received also at the time the sanction of the executive government, though there can be no doubt the majority of the House of Assembly intended, as one consequence of the non-renewal of their appropriations from this fund, to have reduced the commissioner of the estates to the position of the other public

officers during the period of the stoppage of the supplies, and, if possible, to have obliged him to resign his office in consequence.

During the stormy sessions of the provincial parliament which followed the year 1831, a standing committee of the House was constantly occupied with investigations relative to the Jesuits' estates. In the last session at which any public business was transacted (that of 1835–6), a Bill to regulate the future administration of the estates was introduced into the House of Assembly by Mr. Kimber, of Three Rivers, the chairman of this committee ; but though it passed the House it failed to become a law, the disputes between the two Houses having so entirely engrossed attention, after it was sent up to the legislative council, as to prevent that body from proceeding with it to its passage, amendment or rejection. The session came to a close without any decisive action of the council in regard to it. The principal provisions of this Bill will require notice in another part of this report, when the particular subject to which it relates shall be under discussion. With the history of this property as an educational endowment they have no connexion.

PART II.

DESPATCHES RELATING TO LORD DURHAM'S MISSION AND RESPONSIBLE GOVERNMENT

REPRINTED FROM BLUE BOOKS.

Copy of a DESPATCH from Lord *Glenelg* to the Earl of *Durham*, G.C.B.

My Lord, Downing street, 20 January 1838.

Lord Glenelg to the Earl of Durham, 20 January 1838.

Although it will be necessary to reserve, until the approach of the period of your proceeding to Canada, the full instructions which it will be my duty to address to your Lordship, with respect to the important mission which you have undertaken, Her Majesty's Government feel it incumbent on them to take the earliest opportunity of briefly explaining to you, in an official communication, the general line of policy which appears to them best calculated to affect a permanent settlement of the various questions which will demand your attention.

I abstain here from adverting to the measures which may be requisite in order to suppress any remaining symptoms of resistance to Her Majesty's authority; because, from the information which I at present possess, I am induced to hope that, before your arrival in Lower Canada, all open attempts to disturb the public peace, or to impede the due administration of the law, will have been effectively put down; and I trust that the large increase which will be made to the military force in the province on the opening of the navigation will render hopeless any further designs of an insurrectionary character.

Tranquillity having been restored, it will be your duty to enter on the more arduous part of the task committed to you, and to consider what steps should be adopted in order to prepare the way for a return to a system of government founded on those principles of liberty which form the basis both of the British constitution and of that which was given to Canada by the Imperial Act of 1791.

It is upon such a system alone that, in the opinion of Her Majesty's advisers, the colony can be permanently governed with advantage either to its inhabitants or to the mother country; but, after the disturbances by which the

Lord Glenelg to the Earl of Durham, 20 January 1838.

province has been convulsed, it can scarcely be expected that it will at once be restored to such a state of calmness as to allow a regular constitutional mode of government to come into beneficial operation immediately on the suppression of the insurrection; it is therefore proposed that for a limited time Parliament should authorize a different method of administering the affairs of the province. This, however, is but a temporary expedient, intended only to meet the actual crisis, and to afford time for removing the obstacles which have of late years prevented the successful working of a more regular and liberal system of government. It will be your chief aim to prepare the way for the earliest practicable return to such a system, and for this purpose you will use every means in your power to undeceive those who have been betrayed into disaffection, and to reconcile the different classes of the population to each other and to the Government. Your personal influence, and your prompt and impartial attention to every real grievance and every well-founded complaint, Her Majesty is persuaded will have a powerful effect in contributing to this most desirable result.

I need not here advert to the differences which have so long prevailed between the executive government and the legislature of the province. You are already acquainted with their history and character; and you are also aware that, in the year 1835, Commissioners were sent out by the Government of his late Majesty for the purpose of ascertaining the causes which had led to these differences, and of inquiring what alterations it would be right to make in the laws and constitution of the colony with a view to their adjustment. Early in the last year the final reports of the Commissioners were received, and measures founded upon the information which they afforded, and the suggestions they contain were in the course of being submitted to Parliament, when the execution of this design was unavoidably interrupted by the demise of his late Majesty.

The events which have since taken place in Lower Canada, and the degree to which they have exasperated the contending parties in that colony, have rendered it inexpedient, in the opinion of Her Majesty's Government, again to bring forward propositions which were calculated to meet a very different state of things from that which at present exists.

More extensive changes in the Act of 1791 than were then in contemplation seem now to be required, since it is hardly to be hoped that when an actual conflict must have so greatly inflamed those mutual jealousies and animosities between

different classes of the population which before obstructed the working of that Act, it could, without very material alterations, be brought again into beneficial operation. Lord Glenelg to the Earl of Durham, 20 January 1838.

The necessity which has thus arisen of looking to more important amendments of the Act of 1791 than were originally contemplated is a sufficient reason for not at once recommending these amendments to Parliament, with a view to their immediate adoption, since the authority of the Imperial Legislature could not with advantage be employed in carrying into effect changes of this description before the wishes and opinions of those whom they would more immediately affect could be ascertained, especially as the interests of Upper Canada must of necessity be influenced in a greater or less degree by whatever may be done with respect to the Lower province.

In looking back to the history of the now long-continued dissensions of Lower Canada, it may be remarked that one prominent topic of complaint from the party opposed to the majority of the Assembly has been the anti-commercial spirit of legislation attributed to that body, and their alleged indifference to measures calculated to promote the industry of the colony, and the development of its natural resources. This disposition of the representatives of the French population of Lower Canada has been also urged as a most serious grievance by the inhabitants of the Upper province, which by its situation is rendered in great measure dependent, in all that relates to its foreign trade, on the legislation of the former colony. To meet these complaints it has, as you are aware, been frequently proposed, that the two provinces should be united under a common legislature, and some years ago a Bill for effecting that object was actually introduced into Parliament, where, however, upon discussion, it was abandoned. So recently as the beginning of last year, both branches of the legislature of Upper Canada concurred in representing, by a joint address to the Crown, the grievance which they suffered in being denied a freer access to the ocean, and the House of Assembly in another address prayed that the evil might be remedied by the annexation of the island of Montreal to the Upper province.

In order to lay the ground for the permanent settlement of the questions which agitate Lower Canada, and also of those which create divisions between Upper and Lower Canada, it will probably be found necessary to resort to some legislative measures of a comprehensive nature; but before such measures can be framed and submitted to Parliament, it

Lord Glenelg to the Earl of Durham, 20 January 1838.

would be highly desirable to ascertain the wishes and opinions of the people of both provinces regarding them.

This object could best be attained by a personal communication on your part with such persons selected from each province as may be presumed, from their station, character and influence, to represent the feelings of their fellow-countrymen in general. It seems advisable, therefore, to authorize your Lordship, if you should so think fit, to call around you a certain number of such persons, with whom you might take counsel on the most important affairs of the two provinces, the time of meeting of such a committee of advice being left entirely to your discretion.

You are therefore empowered to select three members from the legislative council of Upper Canada to attend such meeting, and to invite the House of Assembly of Upper Canada to nominate ten of its members for the same purpose. Under ordinary circumstances the same course would be pursued with respect to the legislature of Lower Canada. But if the Bill now before Parliament should be passed into a law, recourse must be had, during the suspension of that legislature, to another mode of supplying the deficiency.

You will accordingly, during such suspension, select three members of the body at present composing the legislative council, and will take measures for calling on the electors in each of the five districts into which Lower Canada is now divided to elect two persons to sit in the committee. Your Lordship can obviate any difficulty which may stand in the way of holding such elections by an ordinance for this purpose to be passed by the authority of the Governor in council.

The committee will thus consist of twenty-six members, over whose deliberations you will of course preside.

The committee being thus formed, you will bring before them the subjects on which you desire to receive their opinion and advice. Among the most important of these are the questions in debate between the two Canadian provinces.

In the last session, both Houses of Parliament passed a resolution, 'That great inconvenience has been sustained by His Majesty's subjects inhabiting the provinces of Lower Canada and Upper Canada, from the want of some adequate means for regulating and adjusting questions, respecting the trade and commerce of the said provinces, and divers other questions wherein the said provinces have a common interest, and it is expedient that the legislatures of the said provinces respectively be authorized to make provision for the joint regulation and adjustment of such their common interests.'

It is clear that some plan must be devised to meet the just demands of Upper Canada. Lord Glenelg to the Earl of Durham, 20 January 1838.

It will be for your Lordship, in conjunction with the committee, to consider if this should not be done, by constituting some joint legislative authority, which should preside over all questions of common interest to the two provinces, and which might be appealed to in extraordinary cases to arbitrate between contending parties in either; preserving, however, to each province its distinct legislature, with authority in all matters of exclusively domestic concern.

If this should be your opinion, you will have further to consider what should be the nature and limits of such authority, and all the particulars which ought to be comprehended in any scheme for its establishment.

The Constitutional Act of 1791 will supply another subject of deliberation, with a view to determine what measures may safely be taken to correct the defects which have hitherto interfered, at least in the Lower province, with its successful working.

The constitution of the legislative council has formed the chief topic of complaint with the House of Assembly of Lower Canada, and they have insisted that the only remedy is to be found in making the council elective.

On this subject the following resolution was last year passed by both Houses of Parliament: 'That, in the existing state of Lower Canada, it is unadvisable to make the legislative council of that province an elective body, but it is expedient that measures be adopted for securing to that branch of the legislature a greater degree of public confidence.'

It will be for you and the committee to consider in what manner the judgment thus pronounced by Parliament can best be carried into effect.

There are other very important subjects regarding which you will probably think it right to consult the same advisers; such, for example, as the provision that should be made to meet the necessary expenses of the civil government in Lower Canada; the state of the law affecting the tenure of landed property in that province; the establishment of a court for the trial of appeals and impeachments. There is, in truth, not one of the many interesting questions relating to the good government and well-being of the two Canadas which might not very properly engage the attention of the committee.

On all the subjects which I have specified, and on others which may come under the notice of the committee, your Lordship will probably have to recommend the adoption of

Lord Glenelg to the Earl of Durham, 20 January 1838.

some legislative measures in this country: you will transmit to me an explanation of such measures in the fullest detail, in order that the Government may consider of the propriety of submitting them to Parliament.

You are authorized to fix the times and places of the meetings of the committee, to adjourn from time to time, and to frame all regulations necessary for the despatch of business. You are also empowered to dissolve the committee at your pleasure.

It is obvious that such a body could not be assembled with advantage during the prevalence of disturbance, or while the passions excited by recent conflict are still unallayed; but should a calmer period succeed, the same tranquillity which would render the meeting of such a committee expedient would make it practicable to provide for the election of representatives for the purpose of forming part of it.

Your Lordship, however, will understand that although, with a view to ascertain the opinions of the people, Her Majesty's Government have thought it right to convey to you a distinct authority to convene such a committee as that which I have described, should your own deliberate judgment confirm the view which they at present entertain of its probable expediency, they are fully aware that other modes may hereafter suggest themselves to you by which the same end could be attained, and to which you may give a preference, as being more acceptable to the inhabitants of the respective provinces, or less liable to any objection which may arise to the plan proposed. In that case, it is not the wish or the intention of Her Majesty's Government to restrict the free exercise of your own judgment or discretion, bearing in mind that the great object which they have in view is to avoid giving any just ground for complaints, not unreasonably made on former occasions, against attempting legislative changes affecting Canada, without previously ascertaining the sentiments and wishes of those whom such changes principally concern. Neither, in the brief enumeration of the topics upon which it has been suggested that you should consult with such a committee as has been proposed, is it the intention of Her Majesty's Government to exclude other subjects from your consideration, or to restrict you from entertaining other proposals, whether affecting the two Canadas only or all the British North American provinces, which you may be induced to think conducive to the permanent establishment of an improved system of government in Her Majesty's North American possessions.

Your commission will be co-extensive with the whole of these possessions, for the express purpose of enabling you with the greatest advantage to take the most comprehensive view of their general interests, and to recommend such measures as, after personal communication with men of various classes, and upon mature deliberation, you may consider best adapted to remove all reasonable ground of dissatisfaction in these colonies, and to cement the union subsisting between them and this country by the ties of mutual advantage, and a reciprocal feeling of confidence and good-will. Lord Glenelg to the Earl of Durham, 20 January 1838.

I have, &c.
(signed) *Glenelg.*

Copy of a DESPATCH from Lord *Glenelg* to the Earl of *Durham*, G.C.B.

My Lord, Downing-street, 3 April 1838.

I HAVE the honour herewith to transmit to your Lordship four commissions under the great seal, by which Her Majesty has been pleased to appoint you to be the Governor and Captain-general of the provinces of Lower Canada and Upper Canada, of New Brunswick and of Prince Edward Island. A similar commission, appointing your Lordship to the corresponding offices in Nova Scotia, has already been transmitted to the Lieutenant-governor of that province. I also transmit a separate commission, by which your Lordship is constituted Governor-general of all Her Majesty's North American provinces, including the island of Newfoundland, and Her Majesty's High Commissioner for the investigation of certain questions depending in the Canadian provinces. Lord Glenelg to the Earl of Durham, 3 April 1838.

In my despatch (No. 1) of the 20th of January last, I thought it my duty to record the motives which had induced Her Majesty's Government to advise The Queen to invest your Lordship with unusual and extensive powers, and I then stated the general principles by which you are to be guided in the discharge of your high and arduous duties. My immediate object is to explain what are the powers thus intrusted to your Lordship by your commissions, and by the instructions under the royal sign manual and signet which accompany them. Instructions for N. Brunswick and for Prince Edward Island. Those for Upper and Lower Canada sent in subsequent despatch, No. 20, of 21 April.

The deviations from former precedents which will be found in these commissions, though to a considerable extent suggested by the existing crisis in the affairs of British North

Lord Glenelg to the Earl of Durham, 3 April 1838.

America, are not all referable to considerations of an occasional or transitory nature. The usual practice has hitherto been to address to the Governor of Lower Canada a single commission for the government of the two Canadian provinces; a second single commission for the government of Nova Scotia and Prince Edward Island, and a third and separate commission for the government of New Brunswick. With the title of Governor-general, he has, in fact, been Governor of the province of Lower Canada only, and has been prohibited from resorting to any of the other provinces, lest his presence should supersede the authority of the respective Lieutenant-governors to whose administration they have been confided.

It is difficult to assign any other motive for this practice of issuing three commissions for the government of five distinct provinces to an officer whose functions were to be confined exclusively to one of them, except that this arrangement may have diminished the expenses attendant upon the issuing of such instruments. This advantage, such as it was, has, however, been far more than overbalanced by the inconvenience that two of the five provinces have been invariably left destitute of the original document upon which the powers of the local government may in a certain sense be said to have entirely depended. If any question arose at Toronto or in Prince Edward Island as to the terms of the royal commission, it could be answered only by a reference to Quebec or to Halifax.

But while the number of these instruments was thus reduced, they were filled with a multitude of superfluous words and redundant clauses, which appear to have been transcribed from ancient precedents, without any attention to subsequent changes of the law, or of the state and circumstances of the provinces.

In the accompanying commissions these inconveniences are obviated. For each separate government there will henceforth be a distinct commission, which will be found to contain no provisions but such as are necessary to impart and to define the powers which are to be exercised by the Governor, or, in his absence, by the officer charged with the administration of the government.

On your Lordship's arrival at Quebec, you will open your commission as Governor of that province, and your commission as Governor-general and Lord High Commissioner. The first of these instruments will then be deposited amongst the archives of the province; the second will remain in your Lordship's personal custody, and will accompany you to

every part of British North America to which you may have occasion to resort. Lord Glenelg to the Earl of Durham, 3 April 1838.

The commissions for Upper Canada, for New Brunswick, and for Prince Edward Island, your Lordship will transmit to the respective Lieutenant-governors of those provinces, to be deposited amongst the archives of their respective governments. You will at the same time transmit to each the accompanying commissions under the royal sign manual and signet, renewing their several offices, which would otherwise be superseded by the revocation of Lord Gosford's commissions.

As Lower Canada is that part of British North America in which the necessity for your Lordship's presence will be chiefly felt, your residence will be principally fixed in that province ; but it will probably be convenient, if not indispensable, that you should occasionally resort to all or to some of the adjacent provinces. As often as such an occasion shall arise, and your Lordship shall pass into Upper Canada, New Brunswick, Nova Scotia or Prince Edward Island, you will, by virtue of the commissions there awaiting your arrival, assume the administration of the government of the province in which you may be, and retain it during your residence in such province. During that period, the functions of the Lieutenant-governor will be altogether suspended. It is almost superfluous to suggest, that, with a view to the maintenance of the deference due to the Lieutenant-governor, and to the unimpaired revival of his authority on the resumption of his functions, your Lordship will afford to the Lieutenant governor the utmost countenance in your power, and will mark, by every possible demonstration, that the temporary suspension of his command detracts nothing from his claims on the confidence of Her Majesty's Government, and the respect of the inhabitants at large. On his side, it will be the duty of the Lieutenant-governor to render to your Lordship the utmost possible assistance in the conduct of affairs with which he will be thoroughly conversant, and regarding many of which your Lordship will of course stand in need of information.

Hitherto it has not been the practice to carry on official correspondence between the Governor-general and any of the Lieutenant-governors. The Governor-general and the Lieutenant-governors have severally conducted their respective administrations as separate and independent authorities, addressing all their communications on public affairs to the head of this department, and receiving from the Secretary of State alone instructions for their guidance. As, however, the

Lord Glenelg to the Earl of Durham, 3 April 1838.

success of your Lordship's mission may in no light degree depend on your power of maintaining uniformity of principle in the administration of the different North American governments, in regard to all the more considerable questions which are depending in them, it seems necessary to depart from the existing system so far as may be requisite for attaining that object, but no further.

It will therefore be the duty of each Lieutenant-governor to enter into a free and confidential correspondence with your Lordship on every topic on which you may invite such communications, and to obey every instruction not in itself unlawful which you may address to him ; but it will be desirable to limit such correspondence to questions of general and permanent interest. Nor will you address any positive instruction to any of these officers without fully weighing every representation which he may have made, or may wish to make, on the subject of it.

The Lieutenant-governors will continue their correspondence with me as usual ; and your Lordship will transmit to me a copy of the correspondence which may pass between yourself and any of the Lieutenant-governors.

It will be readily understood that the preceding instructions have not been dictated by any distrust of the zeal or ability of any of the officers at present engaged in the administration of the North American provinces ; they have been suggested exclusively by the present position of affairs in Canada, and by a conviction of the importance of maintaining, on questions of general concern, that unity of purpose throughout the different governments which can be secured only by placing them all, for at least a short period, in some degree of subordination to one authority common to the whole.

I shall transmit a copy of this despatch to each of the Lieutenant-governors, for his information and guidance.

I have, &c.
(signed) *Glenelg.*

Copy of a DESPATCH from Lord *Glenelg* to the Earl of *Durham*, G.C.B.

My Lord, Downing-street, 21 April 1838.

Lord Glenelg to the Earl of Durham, 21 April 1838.

In my despatch of 20th January, I briefly explained to your Lordship, the general line of policy which appeared to Her Majesty's Government, best calculated to effect a permanent settlement of the various questions which would demand your

attention, as Governor-general of Her Majesty's provinces in North America, and I reserved until the approach of the time for your proceeding to Lower Canada, the further instructions which it would then be my duty to address to your Lordship in regard to the same subject. . . .

Lord Glenelg to the Earl of Durham, 21 April 1838.

In my despatch (No. 8) of the 3d April, accompanying your Lordship's commissions under the great seal, I have explained in what respect those instruments differ from the commissions issued to former governors of the same provinces, and what are the powers which, although not enjoyed by your predecessors in the government of Lower Canada, are vested in you for the purpose of a general superintendence over all British North America.

I now propose to fulfil my intention of completing the series of the instructions under which you are to act.

From the latest accounts it appears that, although revolt and insurrection have been suppressed within the Canadas, considerable excitement still exists on various parts of the frontier adjoining the United States, and that several attempts have recently been made by armed citizens of those states to invade the British territory; these attempts have in every instance been successfully resisted, and the government of the United States has taken measures which I trust will prove sufficient to restrain such aggressions in future. It will be your Lordship's duty to adopt the most efficient precautions for the protection of the Canadian provinces from inroad or attack on the part of American citizens, and for the prompt repression of any such attempts should they hereafter be renewed. It is scarcely necessary that I should at the same time suggest the importance of abstaining from all language and conduct calculated to give just or reasonable offence to the government of the United States, the more especially as that government appears to have acted with perfect good faith during the late transactions.

The late revolt in the Canadas, has been followed by the arrest and imprisonment of a very considerable number of persons both in the Lower and in the Upper Province. In regard to Upper Canada, I have not, even to this time, been informed of the course contemplated by the local authorities for bringing such prisoners to trial, except that I know generally that a special commission has been appointed to investigate the charges preferred against them, and that the Habeas Corpus Act has been suspended. From Lower Canada I have later and more ample intelligence.

Sir John Colborne having been authorized to carry into

Lord Glenelg to the Earl of Durham, 21 April 1838.

execution Lord Gosford's proclamation of martial law, had, in his capacity of Lieutenant-general commanding Her Majesty's forces in the provinces, discharged from custody a large number of the prisoners against whom he thought it unnecessary or injudicious to proceed ; and at the date of his last despatches he appears to have expected that it would be in his power to extend the same indulgence to several others ; but he regarded the trial and punishment of some of the more guilty parties as indispensable, and applied to me for instructions as to the means of securing an impartial trial.

On referring to this correspondence, your Lordship will learn the difficulties which appeared to impede the ordinary course of proceeding before the grand and petit juries of the country, and you will find that Her Majesty's Government resolved that, even if it might be right to resort ultimately to any form of trial unknown to the constitution, it would at least be improper to do so without having ascertained by actual experiment that the usual forms are unequal to the occasion. If however that experiment, when fairly tried, in two or three cases, should prove that, under the peculiar circumstances of the colony, the investigation of truth and the equal administration of justice could not be effected by a recourse to the ordinary tribunals, Sir John Colborne was instructed to suspend all further proceedings against the persons charged with treason or traitorous conspiracy, until your Lordship's arrival.

It is possible that under these instructions, Sir J. Colborne may have been enabled to clear the prisons ; but I apprehend it to be more likely that you will find the prisoners in question, or a certain number of them, reserved in custody for your decision ; it is at all events necessary to be prepared for this contingency.

From the very commencement of the late disturbances it has been, as your Lordship is aware, the earnest desire of the Government that the utmost lenity, compatible with public safety, should be exercised towards the insurgents ; this is the principle inculcated in my various despatches to the authorities in Lower and Upper Canada, and it is a principle supported, in our opinion, by considerations, not only of humanity, which cannot in such cases be admitted as the exclusive test of right conduct, but also of true policy in reference to the future well-being of the Canadas. The course of events, and the circumstances in which we may venture to assume you will find the provinces, will supply, as it appears to us, new facilities as well as fresh inducements to the carry-

ing of this principle into effect. You will, I am persuaded, enter into the views of the Government on this subject; and in order to enable you to act with promptitude in this respect, you are relieved from the restriction by which your predecessors were prevented, in the case of treason, from giving an absolute pardon, or granting more than a respite, till the royal pleasure should be known: in your commission that restriction is omitted. Lord Glenelg to the Earl of Durham, 21 April 1838.

The power thus intrusted to you, of granting an amnesty or pardon, in all cases should, in the opinion of Her Majesty's Government, be exercised largely, but not entirely without exception. Independently of persons committed on a charge of murder, to whose cases I have referred in my despatch of the 19th March to Sir J. Colborne, as exceptions to the class of cases fit to be included in an amnesty, there must probably, among the prisoners, be some flagrant and prominent cases of delinquency, which it would not be just or advisable to comprehend in the general lenity. These cases it will be for you to select, in order that they may be brought to trial. In the constitution of the tribunals before which these prisoners are to be arraigned, and in the conduct of the trials, Her Majesty's Government are, after full deliberation, satisfied that there should be no further deviation from the established modes of legal procedure than was sanctioned in my despatch to Sir J. Colborne. You will therefore bring them to trial, in the usual manner, before the courts of justice as at present constituted for the trial of criminal offences in the province. By the verdicts of the ordinary juries, the fate of the prisoners must be decided, subject of course to any questions of law which, as in any other case, might be reserved for the decision of the court, and subject also to the exercise of the prerogative in the commutation, if you should consider it expedient, of the sentence, for a less amount of punishment. Except in case of murder, capital punishments should be avoided: transportation or banishment from the province, for a certain period, imprisonment and fine, will afford the means of commutation of any capital sentence, and I trust also of fully vindicating the authority of the law. Should the course of events, or your experience in the province, lead you to consider that, with regard to future cases of treason or insurrection, an alteration is required in the law regulating the trial of such offences, it will be competent to your Lordship to propose such an alteration to the special council; but Her Majesty's Government are of opinion that no law of this description ought to have a retrospective operation.

Lord Glenelg to the Earl of Durham, 21 April 1838.

The most important object of your Lordship's mission is, however, the settlement of the affairs of Her Majesty's dominions in North America, on such a basis, as may afford the reasonable prospect of an enduring tranquillity under a form of government, corresponding in its general principles with that of this kingdom, so far as such a correspondence is compatible with the essential differences which must subsist between the metropolitan state and its provincial dependencies. On this subject I have little to add to the instructions contained in my despatch of the 20th January.

It is quite unnecessary for me to enter into discussions in this place, on the various plans which have been suggested, both by public bodies and by individuals, with a view of forming a permanent adjustment, such as I have mentioned to be desirable. Indeed, by attempting to discuss them I should only embarrass you, and run the risk of interfering with that complete discretion which it is intended that you should enjoy on every part of this wide subject. I can only recommend to your most serious consideration those plans and any others that may present themselves to your own mind.

You are quite aware of the great principles, on which alone a wise system of polity can be established, and you are no less aware how little of stability can be expected, even for the wisest system, unless it be adapted to the affections and circumstances of the people, whom it professes to benefit. I wish therefore especially to press it on your attention, that, in the preparation of any plan to be submitted to Parliament, the first object should be to ensure every probability of its practical efficiency. I mean that the plan should, in its principle and details, be such as to warrant a well-founded expectation, not only that it shall please and gratify at the moment, but that it shall practically work well; it is by the test of actual experiment that its merits or demerits will eventually be judged.

In my accompanying despatch (No. 17,) I have conveyed to your Lordship, instructions sanctioned by the Lords Commissioners of the Treasury, for your guidance respecting the financial affairs of Lower Canada, and the expenditure of the revenues of the province. The powers with which you are invested by the Act to make temporary provision for the government of Lower Canada are, I trust, so clearly defined in the Act itself, as to supersede the necessity for any attempt on my part at explanation or comment in regard to them. On reference to the recent correspondence with Sir J. Colborne,

you will perceive that a full discretion is reserved to you as to the selection of individuals on your arrival, to constitute the special council. You will, I have no doubt, so exercise this discretion as fully to justify the choice which you may think proper to make. You will enter on the execution of your high duties in the full possession of the confidence of Her Majesty's Government, and in the discharge of it, you may be assured of their utmost support and assistance.

Lord Glenelg to the Earl of Durham, 21 April 1838.

I have, &c.
(signed) *Glenelg.*

Extract of a DESPATCH from the Earl of *Durham*, G.C.B., to Lord *Glenelg*.

Castle of St. Lewis, Quebec, 9 August 1838.

My Lord,

The information which my residence here has enabled me to obtain as to the condition of the two Canadas is of such a nature as to make me doubt whether, if I had been fully aware of the real state of affairs in this part of the world, any considerations would have induced me to undertake so very difficult a task as is involved in my mission. I do not, however, wish it to be understood that I consider success impossible. On the contrary, I indulge in a hope that if the difficulties and dangers that are now so apparent to me are appreciated by Her Majesty's Government, so as to lead to their adoption of measures sufficiently comprehensive and decided to meet the emergency, the objects of my mission may be accomplished.

Earl of Durham to Lord Glenelg, 9 August 1838.

My sole purpose, therefore, in adverting to circumstances which threaten a different result is to impress upon your Lordship my own conviction, which has been formed by personal experience, that even the best informed persons in England can hardly conceive the disorder or disorganization which, to the careful inquirer on the spot, is manifest in all things pertaining to Government in these colonies.

Such words scarcely express the whole truth : not Government merely, but society itself seems to be almost dissolved ; the vessel of the State is not in great danger only, as I had been previously led to suppose, but looks like a complete wreck.

It is needless to point out the wide difference between this representation and the opinions on the subject which were, and probably still are, held by Her Majesty's Ministers ; but

Earl of Durham to Lord Glenelg, 9 August 1838.

since one who had the benefit of whatever information they possessed is nevertheless compelled to acknowledge that the truth, as it now appears to him, differs so much from his previous conceptions of it, what can he infer but that distance has precluded them from acquiring an accurate knowledge of the whole subject? This is my belief, and it becomes, therefore, an imperative duty on my part to convey to your Lordship the exact impressions which I have derived from personal inquiry and observation. I will not shrink from the performance of that duty.

On the present occasion, however, I propose to confine myself to a particular class of circumstances; that is, to those which relate to the Lower Province, and are of the most unfavourable character; my object in making such a selection being to state without reserve, in a separate despatch, certain facts and opinions, as to which, as coming from me, it is most inexpedient that any duplicity should be given for the present: this despatch will therefore be marked 'Secret'.

The first point to which I would draw your attention, being one with which all others are more or less connected, is the existence of a most bitter animosity between the Canadians and the British, not as two parties holding different opinions and seeking different objects in respect to Government, but as different races engaged in a national contest.

This hatred of races is not publicly avowed on either side; on the contrary, both sides profess to be moved by any other feelings than such as belong to difference of origin; but the fact is, I think, proved by an accumulation of circumstantial evidence more conclusive than any direct testimony would be, and far more than sufficient to rebut all mere assertions to the contrary. If the difference between the two classes were one of party or principles only, we should find on each side a mixture of persons of both races, whereas the truth is that, with exceptions which tend to prove the rule, all the British are on one side, and all the Canadians are on the other. What may be the immediate subject of dispute seems to be of no consequence; so surely as there is a dispute on any subject, the great bulk of the Canadian and the great bulk of the British appear ranged against each other. In the next place, the mutual dislike of the two classes extends beyond politics into social life, where, with some trifling exceptions again, all intercourse is confined to persons of the same origin. Grown-up persons of a different origin seldom or never meet in private society; and even the children,

when they quarrel, divide themselves into French and English like their parents. In the schools and the streets of Montreal, the real capital of the province, this is commonly the case. The station in life, moreover, of an individual of either race seems to have no influence on his real disposition towards the other race; high and low, rich and poor, on both sides—the merchant and the porter, the seigneur and the habitant—though they use different language to express themselves, yet exhibit the very same feeling of national jealousy and hatred. Such a sentiment is naturally evinced rather by trifles than by acts of intrinsic importance. There has been no solemn or formal declaration of national hostility, but not a day nor scarcely an hour passes without some petty insult, some provoking language, or even some serious mutual affront, occurring between persons of British and French descent. Lastly, it appears, upon a careful review of the political struggle between those who have termed themselves the loyal party and the popular party, that the subject of dissension has been, not the connexion with England, nor the form of the constitution, nor any of the practical abuses which have affected all classes of the people, but simply such institutions, laws, and customs as are of French origin, which the British have sought to overthrow and the Canadians have struggled to preserve, each class assuming false designations and fighting under false colours—the British professing exclusive loyalty to the Crown of England, and the Canadians pretending to the character of reformers. Nay, I am inclined to think that the true principles and ultimate objects of both parties, taken apart from the question of race, are exactly the reverse of what each of them professes, or, in other words, that the British (always excluding the body of officials) are really desirous of a more responsible Government, while the Canadians would prefer the present form of Government, or even one of a less democratic character. I shall have more to say on this head presently, having mentioned the subject here only for the purpose of citing another fact which tends to prove the existence of a deep-rooted national sentiment on both sides. Such a contradiction between the real and avowed principles of each party, could not have occurred if all the people had been of one race, or if every other consideration had not given way to the sentiment of nationality.

Earl of Durham to Lord Glenelg, 9 August 1838.

This general antipathy of the Canadians towards the British, and of the British towards the Canadians, appears to have been, as it were, provided for at the conquest of the province, and by subsequent measures of the British Government. If

Earl of Durham to Lord Glenelg, 9 August 1838.

Lower Canada had been isolated from other colonies, and so well peopled as to leave little room for emigration from Britain, it might have been right at the conquest to engage for the preservation of French institutions, for the existence of a 'Nation Canadienne'; but, considering how certain it was that, sooner or later, the British race would predominate in the country, that engagement seems to have been most unwise. It insured such a strife as has actually taken place; for, notwithstanding the division of Canada into two provinces, for the purpose of isolating the French, the British already predominate in French Canada, not numerically of course, but by means of their superior energy and wealth, and their natural relationship to the powers of Government.

It was long before the Canadians perceived that their nationality was in the course of being over-ridden by a British nationality. When the Constitutional Act bestowed on them a representative system, they were so little conversant with its nature, and so blind to the probable results of British emigration, that they described the constitution as a 'machine anglaise pour nous taxer', and elected to the House of Assembly almost a majority of Englishmen. But with the progress of British intrusion, they at length discovered, not only the uses of a representative system, but also that their nationality was in danger; and I have no hesitation in asserting that of late years they have used the representative system for the single purpose of maintaining their nationality against the progressive intrusion of the British race. They have found the British pressing upon them at every turn, in the possession of land, in commerce, in the retail trade, in all kinds of industrious enterprize, in religion, in the whole administration of government, and though they are a stagnant people, easily satisfied and disinclined to exertion, they have naturally resisted an invasion which was so offensive to their national pride.

The British, on the other hand, impeded in the pursuit of all their objects, partly by the ancient and barbarous civil law of the country, and partly by the systematic opposition of the Canadians to the progress of British enterprize, have naturally sought to remove those impediments, and to conquer, without much regard to the means employed, that very mischievous opposition. The actual result should have seemed inevitable. The struggle between the two races, conducted as long as possible according to the forms of the constitution, became too violent to be kept within those bounds. In order to preserve some sort of government, the public

revenue was disposed of against the will of the Canadian people represented by their Assembly. The consequent rebellion, although precipitated by the British from an instinctive sense of the danger of allowing the Canadians full time for preparation, could not, perhaps, have been avoided; and the sentiment of national hostility has been aggravated to the uttermost, on both sides, by that excessive inflammation of the passions which always attends upon bloodshed for such a cause, and still more by this unusual circumstance, that the victorious minority suffered extreme fear at the beginning of the contest, and that the now subdued majority had been led to hope everything from an appeal to force. Earl of Durham to Lord Glenelg, 9 August 1838.

There seems to me only one modification of this view of the subject. The employment by the Canadians of constitutional and popular means for their national purpose, has taught some of them, consisting chiefly of the most active and able, higher political views than such as belong to the question of nationality. These men are not at heart friendly to the barbarous institutions of their ancestors, but would readily adopt a more enlightened system, if they could do so without losing their own importance. Their necessary dependence on the prejudiced mass has alone restrained them from joining in many of the views for the improvement of the country which are entertained by the British. They have also learned to estimate the practical abuses of Government which affect all classes, and to wish for many reforms without reference to Canadian nationality. They even had, to some extent, succeeded in disseminating their opinions amongst the mass of their countrymen, and they are not unlikely to play a valuable and distinguished part under any new system of government that may put an end to the strife between hostile races; but, unfortunately, their number is so small as scarcely to affect my opinion of the temper of the Canadian people.

Supposing my view of that subject to be correct, your Lordship will readily understand that the bulk of the Canadian people are as disaffected as ever, and that the British part of the population regard the Canadians with vindictive jealousy. The Imperial Government is distrusted by both parties; by the Canadians because they fear, or rather expect in gloomy silence, that advantage will be taken of their late rebellion to remove the very causes of dissension, by giving a British character to the institutions and laws of the province, so that there shall no longer be any serious impediment to British colonization and enterprize; and by the British, on the other hand, because they doubt whether the Imperial Government

Earl of Durham to Lord Glenelg, 9 August 1838.

will ever sufficiently understand the state of parties here, to approve of the great changes which must inevitably take place, if another period of legislative strife, and perhaps another rebellion, are to be averted.

And here I must notice a fact of great importance. The more discerning of the Canadians are perfectly aware that if the authority of the United States should ever extend to this country, whether by means of war or of a peaceful union, the peculiar institutions, and even the language, of French Canada would be extinguished as soon as possible, yet are they willing, with the exception perhaps of a considerable portion of the clergy, to incur the loss of all that they have held most dear, in order to gratify the sentiment of vengeance that has now got possession of them. I would not exaggerate the amount of the sacrifice that they are willing to make for the sake of revenge. It is right to add, therefore, that, in my opinion, they almost despair, come what may, of preserving those ancient usages and that distinct nationality, in defence of which they have struggled so many years.

But be this as it may, whether they are moved by a sentiment of mere vengeance, or by revenge mixed with despair, I am well convinced that an American invasion of this province would be highly acceptable to most of them.

Satisfied of the disaffected temper of the Canadians as a people, I have naturally taken pains to acquire correct information as to the state of feeling in the United States as respects these colonies and the mother country.

All reports concur in assuring me that the present government of the Union, and a vast majority of the American people, are decidedly adverse to a rupture with England. Having already conveyed this assurance to your Lordship, I need not dwell upon it here ; but there are points in the state of American feeling towards these colonies, and especially near the frontier, of so much moment as to require particular notice.

In the first place, although some persons in the States, and the more so if they have visited this country, are aware of the true nature of the late rebellion, it is a common opinion in America that the contention in this province has been between the executive government on the one hand, supported by a minority, and the majority of the people, without distinction of race, on the other ; and that the subject of disagreement has been, practical grievances and general principles similar to those which formed the matter of dispute between England and her old colonies in America.

As their fathers rebelled in defence of those old English charters of local self-government, which placed local taxation and revenue at the sole disposition of popular assemblies, so they think that the Canadian majority was justified in withholding supplies, and in resisting by force the violation of their constitution by the British Parliament. Earl of Durham to Lord Glenelg, 9 August 1838.

They believe, in a word, that the majority in Lower Canada has contended for the maintenance of popular rights, and that arbitrary government is the aim of the minority. The mistake is easily accounted for: it is only on the spot that one learns how the subject of strife in Lower Canada has been a question of nationality; everywhere else, the false professions and designations employed by both parties, combined with the plain fact that the contest has been between a majority and a minority, is apt to mislead the inquirer, by keeping out of view the distinction of races. If the whole subject were understood by Americans, they would probably sympathize with those who are of the same origin as themselves, who resemble them in numerous particulars, and who seek objects which, if this country were under American rule, would be unhesitatingly accomplished, as similar objects have been attained in the Dutch colony of New York, and the French colony of Louisiana.

There is no people under the sun to whom the feudal institutions and most defective civil laws of the Canadians would be more intolerable, than to the Anglo-Saxon race of the United States. But they have misunderstood the case. They have fallen into the not uncommon mistake of confounding means with ends. Believing that the means employed by the Canadians, in the Assembly, were constitutional and popular, and seeing that the British, being in a minority, necessarily clung to the local executive and the imperial authority; above all, regardless of the accident (for so it may be termed with respect to the question of nationality), by which the Canadians happen to constitute a majority, Americans have supposed that the objects of both parties in the colony were of the same nature respectively, as to the means on which each party has relied. An ever active sentiment of national pride is, perhaps, the most remarkable feature in the American character. It might have been foreseen, therefore, that the Americans, proudly recollecting the origin and progress of their own revolutionary war with England, should sympathize with the Canadians, or rather with the majority, who happen to be Canadians. Whether they may ever comprehend the false position assumed by both parties in this colony, I will not

Earl of Durham to Lord Glenelg, 9 August 1838.

venture to predict; but so long as their view of the subject shall remain unchanged, they will, I believe, continue to sympathize with that side which has the air of contending for democratic principles and popular objects, and to wish that it may prevail over the other, which appears in the light of an oppressive minority.

Secondly: Having regard to the national pride of America, it is certain that the temper and tone of the British party towards that country, tends to stir up angry passions throughout the Union, and especially near the frontier, where articles from the colonial newspapers are generally reprinted. Hitherto the national pride of America has not been deeply wounded by these means (and I do all in my power to mitigate the national influence of such affronts to it); but I am credibly informed that these unceasing attacks have not been without effect, and that they form a subject of growing irritation.

Thirdly: By the existence of a state of things out of which it is easy to see that war might spring, the American mind becomes more and more familiar with the idea of war. Differing as the Americans do, from all other nations, in the universal diffusion of an active interest in public affairs, and in a habit which belongs to all ranks, of calculation as to the future, they are led, by the political state of these provinces, to discuss the subject of war hypothetically, if I may use the expression; they are reminded of the events of the last war, and one of them in particular, the capture of Washington, which inflicted a deep wound on the national pride, and by frequently conversing on such exciting topics, they gradually approach that state of feeling under which the government, necessarily impelled by the people, would find it hard to maintain friendly relations with England.

Fourthly: It is not to be denied that the distracted state of these colonies occasions no little inconvenience to the frontier states, and to the federal government; it calls for an increase of the army, a sort of military array on the frontier, and the exercise of new powers by the executive, which are opposed to the habits, if not the institutions, of the American people. All the expense and annoyance are attributed to the British Government. A dispassionate American admits that his government is bound, at whatever cost, to prevent aggressions on the Canadian frontier, and he does not deny that the obligation has been inadequately fulfilled; but when reminded of the inefficiency of the laws for that purpose, and the weakness of the American executive, he answers that the true source of every difficulty is the weakness of the British Govern-

ment in Canada, which has not maintained order amongst its own subjects, nor is able to protect the United States from such a nuisance as arises from the conduct of British refugees within their territory. This retort, without stopping to examine its justice, suffices to show that, until order shall be restored in these colonies, a great cause of irritation in America will probably continue to operate with increasing force. Earl of Durham to Lord Glenelg, 9 August 1838.

Fifthly : The boundary question, being much mixed, as it unavoidably is in America, with considerations arising out of the state of these colonies, forms a more active element of hostile feeling than would otherwise have been the case.

Lastly : It is certain that, amongst the frontier population of the United States, which, I should observe, has very greatly increased since the last war, there exists a numerous body of men, young, active, energetic, and self-relying, who, from various motives, long for an opportunity of invading Canada. Some of them are moved by an opinion, which it would not be easy to question, that if these colonies were laid open to American enterprize, a great impulse would be given to the industry and trade of that part of the States which now constitutes the frontier ; some are influenced by one or other of the circumstances to which I have already adverted ; some by that love of adventure merely which belongs to the American character ; and some by a reasonable calculation of the gain and distinction which, in troubled times, usually fall to the most active and daring. The manner in which these people talk of invading the Canadas exemplifies the self-reliance of American citizens. They do not expect that the federal government should open the way for them by military operations ; they even avow their belief that, in a contest of troops only, the British would surely prevail ; but they reckon upon the friendly disposition towards them of great numbers on this side, and upon swarming over the line in such numbers, and at so many places simultaneously, as to get possession of the country in spite of military obstacles. I do not pretend to weigh such calculations, but state them as they have been reported to me. If I am not misinformed, it is well that I should remind Her Majesty's Government of the invasion of Texas by a body of American citizens, who, without the least aid from their government, have seized an extensive country, defeated armies, got possession of the soil, and established themselves as a nation, with constitutional government, a judicial system and municipal institution, as complete as any in America. There is certainly no immediate danger of such an attack upon these colonies ; and I have

Earl of Durham to Lord Glenelg, 9 August 1838.

mentioned the subject only for the purpose of indicating the probable character of the contest that would take place here, if all the causes now in operation should finally produce one. It was in consequence of all these important considerations that, during my late residence on the American frontier, I courted the most unreserved communication with all respectable Americans, for the purpose of impressing them with a more sound and accurate conception of the real state of things; with a more just appreciation of our system of government, and its real objects; and with a due sense of the danger which would arise to themselves, if their government remained a passive spectator of all these proceedings, tending, as they did, to destroy all confidence in its executive strength, and all reliance on the national honour.

I am happy to say that my efforts have been successful, that a great change has taken place in public feeling on the American side, and that my exertions to restore tranquillity and good order are encouraged and supported by the most influential portions of the press and of society in the United States.

Except as it has been noticed for the purpose of explaining the temper of the Canadians, and one of the causes of irritation in the United States, a most important subject yet calls for your Lordship's attention; I allude to certain feelings and views of the British section of Her Majesty's subjects in this province.

Your Lordship is already informed of the general satisfaction expressed by the British party at my having, when I assumed the Government, avoided connecting myself with the old body of officials. It may be supposed that the body in question did not participate in that sentiment. I very soon became aware therefore of the existence of some difference between the official body and the British in general. Subsequent observation has convinced me that, except in their common hostility to the Canadians, there is no sympathy between these two classes.

That this should be the case is really not surprising when one discovers how all the powers of Government have been neglected and abused for many years past in this colony. Not to go further back than the commencement of serious differences between the Canadians and British as such; since, when the two branches of the legislature have neglected their proper functions to pursue the contest between races, a long time has passed without anything like beneficial legislation, and not a few of the many evils resulting from this perversion of

legislative powers have, by a very natural mistake, been attributed to neglect and corruption in the Executive. At the same time it must be confessed, that the Executive has been both neglectful and corrupt. I need not remind your Lordship of those flagrant instances in which the Imperial Government has been led to interfere for the correction of administrative abuses, nor is this a fit occasion for entering on that subject in detail; but I am bound to add, that the Government of this province, including the administration of justice, has not obtained the respect of the people, and that, according to all my information, there has been ample ground for the distrust and suspicion with which authority is regarded. Earl of Durham to Lord Glenelg, 9 August 1838.

This leads to another feature in the disposition of that portion of the British inhabitants which may be termed 'independent'. Their main object, as I have before explained, has been to remove the obstacles which the ignorance, the apathy, and the ancient prejudices of the Canadians opposed to the progress of British industry and enterprize; to substitute, in short, for Canadian institutions, laws and practices, others of a British character. In this pursuit they have necessarily disregarded the implied, not to say precise, engagement of England to respect the peculiar institutions of French Canada. But the Imperial Government, on the contrary, never quite forgetting that ancient pledge, has rather extended its protection to the Canadians than espoused the cause of the British settlers. It were to be wished, perhaps, that this policy had been consistently pursued from the beginning, as in that case a British community might not have grown up here with feelings, wants, and a degree of power which make it simply impossible to pursue such a policy now. But it has not been consistently pursued. By a variety of measures, and especially by promoting emigration to this colony, the Imperial Government have really undermined the Canadian nationality which they perhaps intended to preserve. A similar contradiction may be observed in their treatment of the national struggle which has ended in civil war. Never taking a decided part with either section in the colony, they have wavered between them, now favouring the one and then the other, but neither decidedly, and finally displeasing both sections in about the same degree. Under such a system, if it may be called one, no governor could have pursued a consistent course, or have attached either the Canadians or the British to the Imperial Government.

I should not permit myself to say this reproachfully, even if there were room for an accusation, which in my humble

Earl of Durham to Lord Glenelg, 9 August 1838.

opinion there is not; but I mention it as a necessary result of the original false step, and for the purpose of explaining the present disposition of the British party. Deeply offended at every measure or decision of the Imperial Government which thwarted their own British or Anti-Canadian views, they are also wanting in that respect for the supreme authority which is sometimes felt by the discontented subjects of a decided and vigorous Government. Restrained (though not entirely) from the public expression of their sentiments by a hope that the Imperial Government may yet accomplish the object on which their heart is set, they have no such reserve amongst themselves, nor do they at all care who knows of the language commonly held by them when speaking of the Imperial Government, and the connexion between this colony and the mother country.

I am assured that the leaders and their followers, one and all, are in the habit of declaring, that rather than be again subject to the French (meaning, rather than see another majority of Canadians in the Assembly), they shall find a way to take care of themselves.

I should be sorry to report any idle conversation upon such a topic, but have no doubt that language of this kind is commonly uttered with an earnestness of manner which should prove its sincerity. And this is not all: for the sentiments expressed are enforced by deliberate arguments, such as that, considering the exasperation of the Canadians produced by late events, there can be no permanent safety for people of British descent, except by rendering the colony thoroughly British; and that if the Imperial Government should not provide for the security of its British subjects, the time will soon be past for obedience to any other law than that of self-preservation.

That such views are currently expressed amongst the British party, there can be no doubt; and I am the more disposed to believe them sincerely entertained, because, having reference to a future contingency, they are not inconsistent with those loud professions of loyalty and attachment to England by which the British minority has hitherto sought to enlist the Imperial Government against the Canadian majority. At present, of course, such views are merely speculative, everything being held in suspense by the large powers awarded to me, and by the hope of a happy settlement of affairs upon my recommendation.

Notwithstanding, however, the very unfavourable representations contained in this despatch, I am induced to hope

with confidence, that success may ultimately attend the measures with respect to this country which have been recently adopted by the Imperial Government. My principal reason for this assurance is drawn from the good effect already produced by decided and vigorous action. The exercise of the very extensive powers placed in my hands seems to have operated as a sort of charm, like oil poured upon troubled waters. At this moment all is still. A stranger would hardly believe that the country had been recently distracted by civil war. Expectation for the future is, I trust, taking the place of angry passions occasioned by the past. I must, however, conclude by assuring your Lordship, that whatever hopes I entertain of the future, depend altogether on the supposition that Her Majesty's Government and Parliament will not shrink from the adoption of permanent measures of remedy and prevention, proportioned to the greatness of the difficulties with which I have yet to contend, and will sanction such measures as will effectually provide for the abstraction of all legislation on British interests from the control of a French majority. I am of opinion that this great object can be legitimately effected without violence to Canadian rights, and in strict accordance with the soundest principles of constitutional government.

Earl of Durham to Lord Glenelg, 9 August 1838.

The time is fast approaching when I shall be enabled to bring these measures under the consideration of Her Majesty's Government; and in the meantime I recommend to their serious attention the important points to which I have referred in the present communication.

COPY OF A DESPATCH FROM LORD JOHN RUSSELL TO THE RIGHT HON. C. POULETT THOMSON.

Sir, Downing Street, 14th Oct. 1839.

Lord John Russell to the Right Hon. C. Poulett Thomson. October 14, 1839.

It appears from Sir George Arthur's despatches that you may encounter much difficulty in subduing the excitement which prevails on the question of what is called 'Responsible Government'. I have to instruct you, however, to refuse any explanation which may be construed to imply an acquiescence in the petitions and addresses upon this subject. I cannot better commence this despatch than by a reference to the resolutions of both houses of Parliament, of the 28th April and 9th May, in the year 1837.

The Assembly of Lower Canada having repeatedly pressed this point, Her Majesty's confidential advisers at that period thought it necessary not only to explain their views in the communications of the Secretary of State, but expressly called for the opinion of Parliament on the subject. The Crown and the two houses of Lords and Commons having thus decisively pronounced a judgment upon the question, you will consider yourself precluded from entertaining any proposition on the subject.

It does not appear, indeed, that any very definite meaning is generally agreed upon by those who call themselves the advocates of this principle; but its very vagueness is a source of delusion, and if at all encouraged, would prove the cause of embarrassment and danger.

The constitution of England, after long struggles and alternate success, has settled into a form of government in which the prerogative of the Crown is undisputed, but is never exercised without advice. Hence the exercise only is questioned, and however the use of the authority may be condemned, the authority itself remains untouched.

This is the practical solution of a great problem, the result of a contest which from 1640 to 1690 shook the monarchy, and disturbed the peace of the country.

Lord John Russell to the Right Hon. C. Poulett Thomson. October 14, 1839.

But if we seek to apply such a practice to a colony, we shall at once find ourselves at fault. The power for which a minister is responsible in England, is not his own power, but the power of the Crown, of which he is for the time the organ. It is obvious that the executive councillor of a colony is in a situation totally different. The Governor, under whom he serves, receives his orders from the Crown of England. But can the colonial council be the advisers of the Crown of England? Evidently not, for the Crown has other advisers, for the same functions, and with superior authority.

It may happen, therefore, that the Governor receives at one and the same time instructions from the Queen, and advice from his executive council, totally at variance with each other. If he is to obey his instructions from England, the parallel of constitutional responsibility entirely fails; if, on the other hand, he is to follow the advice of his council, he is no longer a subordinate officer, but an independent sovereign.

There are some cases in which the force of these objections is so manifest, that those who at first made no distinction between the constitution of the United Kingdom, and that of the colonies, admit their strength. I allude to the questions of foreign war, and international relations, whether of trade or diplomacy. It is now said that internal government is alone intended.

But there are some cases of internal government, in which the honour of the Crown or the faith of Parliament, or the safety of the state, are so seriously involved, that it would not be possible for Her Majesty to delegate her authority to a ministry in a colony.

I will put for illustration some of the cases which have occurred in that very province where the petition for a responsible executive first arose—I mean Lower Canada.

During the time when a large majority of the Assembly of Lower Canada followed M. Papineau as their leader, it was obviously the aim of that gentleman to discourage all who did their duty to the Crown within the province, and to deter all who should resort to Canada with British habits and feelings from without. I need not say that it would have been impossible for any minister to support, in the Parliament of the United Kingdom, the measures which a ministry, headed by M. Papineau, would have imposed upon the Governor of Lower Canada;—British officers punished for doing their duty; British emigrants defrauded of their property; British merchants discouraged in their lawful pursuits,—would have

Lord John Russell to the Right Hon. C. Poulett Thomson. October 14, 1839.

loudly appealed to Parliament against the Canadian ministry, and would have demanded protection.

Let us suppose the Assembly as then constituted, to have been sitting when Sir John Colborne suspended two of the judges. Would any councillor, possessing the confidence of the Assembly, have made himself responsible for such an act? And yet the very safety of the province depended on its adoption. Nay, the very orders of which your Excellency is yourself the bearer, respecting Messrs. Bedard and Panet, would never be adopted, or put in execution by a ministry depending for existence on a majority led by M. Papineau.

Nor can any one take upon himself to say that such cases will not again occur. The principle once sanctioned, no one can say how soon its application might be dangerous, or even dishonourable, while all will agree that to recall the power thus conceded would be impossible.

While I thus see insuperable objections to the adoption of the principle as it has been stated, I see little or none to the practical views of colonial government recommended by Lord Durham, as I understand them. The Queen's Government have no desire to thwart the representative assemblies of British North America in their measures of reform and improvement. They have no wish to make those provinces the resource for patronage at home. They are earnestly intent on giving to the talent and character of leading persons in the colonies, advantages similar to those which talent and character, employed in the public service, obtain, in the United Kingdom. Her Majesty has no desire to maintain any system of policy among her North American subjects which opinion condemns. In receiving the Queen's commands, therefore, to protest against any declaration at variance with the honour of the Crown, and the unity of the empire, I am at the same time instructed to announce Her Majesty's gracious intention to look to the affectionate attachment of her people in North America, as the best security for permanent dominion.

It is necessary for this purpose that no official misconduct should be screened by Her Majesty's representative in the provinces; and that no private interests should be allowed to compete with the general good.

Your Excellency is fully in possession of the principles which have guided Her Majesty's advisers on this subject; and you must be aware that there is no surer way of earning the approbation of The Queen, than by maintaining the harmony of the executive with the legislative authorities.

While I have thus cautioned you against any declaration

from which dangerous consequences might hereafter flow, and instructed you as to the general line of your conduct, it may be said that I have not drawn any specific line beyond which the power of the Governor on the one hand, and the privileges of the Assembly on the other, ought not to extend. But this must be the case in any mixed government. Every political constitution in which different bodies share the supreme power, is only enabled to exist by the forbearance of those among whom this power is distributed. In this respect the example of England may well be imitated. The sovereign using the prerogative of the Crown to the utmost extent, and the House of Commons exerting its power of the purse, to carry all its resolutions into immediate effect, would produce confusion in the country in less than a twelvemonth. So in a colony: the Governor thwarting every legitimate proposition of the Assembly; and the Assembly continually recurring to its power of refusing supplies, can but disturb all political relations, embarrass trade, and retard the prosperity of the people. Each must exercise a wise moderation. The Governor must only oppose the wishes of the Assembly where the honour of the Crown, or the interests of the empire are deeply concerned; and the Assembly must be ready to modify some of its measures for the sake of harmony, and from a reverent attachment to the authority of Great Britain.

Lord John Russell to the Right Hon. C. Poulett Thomson. October 14, 1839.

I have, &c.,
(Signed) J. RUSSELL.

The Right Hon. C. Poulett Thomson,
&c. &c. &c.

PART III.

SKETCH OF LORD DURHAM'S MISSION TO CANADA IN 1838.

Written by Mr. Charles Buller, in 1840.*

A complete history of Lord Durham's mission to Canada would be a work requiring much research respecting a long chain of preceding and a great variety of contemporaneous events. Nor is the time yet come for giving such a history with the minuteness and accuracy which I should desire. Time must yet elapse before we shall be able sufficiently to develop much of the secret motives and acts of the parties concerned. Nor are the general bearings and results of what then occurred become yet sufficiently apparent for the world in general to appreciate in their full extent the magnitude and usefulness of the measures then adopted. It is still matter of interest, of pique, or of a false point of honour with great parties and powerful individuals to refuse to the memory of Lord Durham that justice which could not be granted without condemning their conduct, or stripping them of the credit which they wish most unjustly to arrogate to themselves. We, whose first purpose must be to secure him justice, have however but to wait till time shall attain for us the object which we have at heart. True and lasting fame must almost always be earned as much by patience as by merit. And sure may we be that if our estimate of Lord Durham's policy and acts during this mission be correct, the results will unfold themselves in such a manner as to force even the most inattentive or prejudiced to view them aright. The interests, and the passions too, that have hitherto thwarted our endeavours to obtain justice will in the same manner be dispelled by mere lapse of time ; and it will probably not be long ere some of the very parties and individuals that have hitherto fancied it their interest to decry Lord Durham will find policy as well as justice inducing them to vindicate for him the honour which others seem inclined to usurp. My purpose in writing this sketch of the mission to Canada is to give a succinct view of the state of affairs with which Lord Durham had to deal ; of the incidents which occurred during his government ; of

* From original manuscript. Presented to A. G. Doughty, C.M.G., Dominion Archivist, by the Earl of Durham, July 1910.

the steps that he took in order to overcome the immediate difficulties which he had to encounter; and of the plans, by which he purposed to put the government of the North American colonies on a footing of permanent tranquillity, freedom, and progress.

My personal acquaintance with Lord Durham only commenced in the summer of 1837, on his return from Russia; and I had seen very little of him at the time when the Bill for the temporary government of Canada was brought into Parliament. Absolute as the necessity of some such measure was, it would have been very difficult to get the assent of all parties to the establishment of such a power in the hands of any other individual than Lord Durham. So high did he stand in the estimation of all parties that the Tories were obliged to be as unanimous in their acquiescence as the Liberals of every shade were in their loud approval. His memorable speech in the House of Lords on the night that the measure was first announced in it, increased the feeling of confidence in him. Such an occasion admitted indeed of no display of reasoning or information; but Lord Durham's short speech showed that he was actuated by a firm determination and a spirit of most impartial justice; it marked a deep sense of the heavy responsibility which he had taken on himself; and it breathed a chivalrous reliance on the cordial support of friends, and the generous forbearance of opponents, that made both of them affect a show of such feelings, and led the public to believe that they entertained them. This was most unfortunate for Lord Durham, for it led him to expect cordial support and generous forbearance where prudence would have induced to count on one as little as the other, and thus have spared him the pain of the double disappointment which he afterwards experienced.

It was a day or two after this speech that Lord Durham, while sitting under the gallery of the House of Commons, desired me to call on him the next morning. Anticipating the purpose for which he desired to see me, and having had a good deal of discussion on the subject with my own family, I went to the interview having made up my mind not to accept of any offer of going out to Canada. Lord Durham made me the proposal in very flattering terms, and with much kindness. I was not very easily induced to change my resolution, but he desired me to take a little time for consideration ere I gave my final answer; and the result of reconsideration and of consultation with friends was that the next morning I accepted the offer.

I wish that it had so happened that at the period of my thus undertaking to serve under Lord Durham our acquaintance had been of longer standing, and that I had been on those terms of perfect confidence with him to which I very soon attained. For though nothing could be more uniformly kind than Lord Durham was to me from the first, though he was not long in giving me his confidence, and when he gave it gave, as he always did, without reserve, yet the mere awkwardness arising from imperfect personal acquaintance is enough in any case for some time to prevent a sufficiently free communication between two people. Had we at the outset been on the terms on which we got in a very few weeks, I think I might have enabled Lord Durham to avoid what always struck me at the time and has, I think, since proved to have been an error most injurious to the success of the mission. This was the delay that occurred before we entered upon it; and though the season of the year placed some difficulties in the way of our going to Quebec in the mode that appeared most desirable, I think that Lord Durham's first object should have been that of commencing his work with promptitude. The delay took off the bloom of the mission; the insurrection was to all appearance wholly suppressed before we started; the danger began to be thought less urgent; and the general impression of the necessity for great powers and unusual measures was gradually weakened. We soon felt the effect of this, for as the first alarm so the first unanimity wore off, and the Tories, as they recovered spirits, began to find all manner of faults with the mission, and to circulate a variety of falsehoods, to draw invidious comparisons between Lord Durham and Sir John Colborne, and to depreciate the moral effect of the powers of the new Governor-General.

This altered state of feeling soon began to show itself in the Press, and in Parliament we had a very unpleasant indication of it in the very near success of Lord Chandos's motion respecting the expenses of the mission. Soon after that difficulties began to be experienced with respect to the appointment of Mr. Turton; and the opposition to Lord Durham here commenced on the part of supporters and members of the Government. It is impossible now not to regret an appointment, which was the occasion of so much subsequent annoyance and evil. Useful as Mr. Turton's legal knowledge and abilities were, and creditable to Lord Durham as was his eagerness to avail himself of the opportunity afforded him of serving an old and unfortunate friend by the suggestion of giving him the appointment, which was made to him

by Mr. Stanley, and urged on him by Sir John Hobhouse, yet it cannot but be regretted that the appointment was ever made, and still more so that after the difficulties, which prevented its being sanctioned by the Colonial Office, Mr. Turton should have been taken out without the written approval of the ministers. But there was the very clearest understanding respecting the terms on which Mr. Turton was to go out. It was distinctly arranged between them and Lord Durham that though the appointment was not to be made by ministers or in England, Mr. Turton was to go out with us, it being left to Lord Durham to appoint him to office on his own responsibility after our arrival in Canada. Lord Durham, confiding in the promised forbearance of the Tories and the cordial support of ministers, left the matter on this footing of clear but unwritten understanding. Unhappily we had none of us then learned how necessary it was to distrust both.

It is painful now to recall the circumstances of our embarkation in the *Hastings*. I had got on board about an hour before Lord Durham came, and, having found everything in my cabin in utter confusion, I had been exerting myself so busily in seeing things arranged as well as possible that every melancholy thought naturally excited by leaving England had been for the moment completely put out of my mind. I had just got over my difficulties, when the steamer bringing Lord Durham and his family came alongside. All the parade of naval reception was of course exhibited on the occasion: the marines were drawn up, and the officers, with the captain at their head, were on the deck, when Lord Durham, who had been very ill the night before, came looking very pale, and wrapped in a large cloak, with Lady Durham and his children around him. Painful thoughts arose within me at the sight of a man so distinguished leaving his country with his whole family for what, though an honourable, was still a painful exile, and a duty of arduous responsibility; and when on a sudden the band struck up its loud and slow strain, the sudden excitement brought the tears at once into my eyes. I did not long indulge these feelings, I thought that this was but a passing and necessary trial attendant on the outset of a career of high utility and honour, of which the first glory would be the pacification of Canada, and the ultimate reward would be renown, power, and happiness at home. But the foreboding of the first moment was unfortunately more prophetic than my calmer afterthought.

In one respect we did most certainly merit success: for never I believe, did men embark in any public undertaking

with more singleness and honesty of purpose. During the long period of our voyage out we read over all the public documents connected with the subject of our mission, and the dispatches, instructions, and other papers with which the Colonial Office had supplied us ; and very fully did we discuss all the various and difficult questions which it appeared to us that we should have to solve. We had, I must again say, very little thought of ourselves, and a very absorbing desire so to perform our task as to promote the best interests both of Canada and of Great Britain. And I think I may also say that we had very few prejudices to mislead us. I used indeed then to think that Lord Durham had too strong a feeling against the French Canadians on account of their recent insurrection. I looked on that insurrection as having been provoked by the long injustice, and invited by the deplorable imbecility of our colonial policy ; and I thought that our real sympathies ought to be with a people whose ultimate purposes were aright, though by the misconduct of others they had been drawn into rebellion. But Lord Durham from the first took a far sounder view of the matter : he saw what narrow and mischievous spirit lurked at the bottom of all the acts of the French Canadians ; and while he was prepared to do the individuals full justice, and justice with mercy, he had made up his mind that no quarter should be shown to the absurd pretensions of race, and that he must throw himself on the support of the British feelings, and aim at making Canada thoroughly British.

It was not, however, only these questions, paramount as they of course were to all others, that formed the subject of our many and long conversations in the *Hastings* ; and I look back with satisfaction to the interesting views which Lord Durham often gave me of the great questions of European policy, and of the important events, in which he had borne so great a part. Many a stirring scene of old political conflicts did he recount, and many a secret history did he give, which explained the nature and causes of some of the great political movements of our time.

In spite, however, of all our occupations we got somewhat tired of our voyage before the first land on the American continent met our eyes. An ungenial aspect did our new home present to us as we lay for two or three days beating about at the mouth of the St. Lawrence, now looking at the long low desert island of Anticosti, now borne close to the unpeopled forests of Gaspé, and now catching a glimpse of the icy rocks of Labrador glittering in the far distance. Here,

however, we received a file of Quebec papers, that gave us some insight into what was passing in Lower Canada. Nor was the information by any means assuring. The French Canadians, it is true, appeared to be making no movement ; but for this very reason it seemed to be generally apprehended that they were preparing their forces for some new attempt. The people of the United States were represented as universally fomenting and aiding the designs of the disaffected, and as hardly to be restrained from breaking into open hostility. Amid all these dangers the British population of Lower Canada was evidently torn in pieces by numerous and furious dissensions. A very violent party, while it called for war with the United States, and for the harshest measures against the French Canadians, kept no terms with its own Government, and denounced both local and Imperial authorities in the most unmeasured terms. We learned that a few days before, in anticipation of our arrival, a meeting of the British population had taken place at Quebec. At this the violent party appeared to have carried the day ; various speakers had used language expressive of very little confidence in the Governor-General, and an address had been adopted which, though it contained nothing positively offensive, showed the bad spirit that animated those who had assumed the lead of what was called the British party. This intelligence, disagreeable as it was, proved nevertheless of use, because it prepared Lord Durham beforehand for the kind of feeling and language which he was to meet with on landing. And during the two or three days that elapsed before our arrival at Quebec he prepared the proclamation to the inhabitants of British North America which he published on disembarking.

It is not my business here to narrate with minuteness every little incident that occurred, or to recall the various scenes of our mission as they passed before our eyes. But I cannot look back without emotion at the bright and cheerful day on which we arrived at Quebec. When we got on deck in the morning we found the river considerably narrowed from its width of the previous day ; the high mountains, which then seemed to overhang us, were now seen at a distance in the background, and between them and the river there extended on each side a long line of well-cultivated and apparently densely-peopled country, which presented to our view what looked almost like a long street of white cottages and farm-buildings. It was one of the first fine days of the late spring of that country ; the snow was off the ground, and the first signs of incipient vegetation were visible in the fields which

lay close to us on each side as, with wind and tide in our favour, we advanced with great rapidity up the river. It was Sunday, and as at every two or three miles we passed a village church on one side or the other, the whole population seemed to be collected on either shore to watch the progress of their new Governor.

At last over a reach of the river we saw the black line of the ramparts of Quebec, and the tin roofs of the city glittering in the sun; and, having passed through the noble basin, which stretches before the town, we found ourselves amid a whole fleet of men-of-war, beneath the very guns of the magnificent fortress. Our landing did not take place for a couple of days, but from the moment of our arrival in the harbour we received the visits of the various authorities and public officers of the province.

At the very moment of landing, and taking upon himself the government, it became necessary for Lord Durham to resolve upon a very important and bold step. For it was usual for the new Governor immediately after having taken the oaths of office, to proceed to swear in those of whom he intended to form his Executive Council, and the custom had been for every new Governor to continue the Council of his predecessor. This, however, Lord Durham had made up his mind not to do, and subsequent reflection has only more and more convinced me that this was the wisest course of conduct which he could have pursued. The strange system of colonial government, by which every person once in office was held in practice to be for ever irremovable, had had the effect of filling the Executive Council with some of the oldest men of every clique that had in succession ruled the province. Many of these either happened to have been subordinate members of their party, or to have been selected simply because they were attached to no party, and being men of little strength of character, or position in public life, were likely to be very docile agents of the one or two persons who really managed the government. No one of them possessed the confidence of the British population. The only one who, from his talents and previous career, formed an exception to the general nullity which I have described, was Mr. Debartzch, one of the ablest and most active of the French Canadians. He had been recently placed in the Council by Lord Gosford. This man, however, was, more than any other man in the province, obnoxious to the British population, on account of his very talents, on account of the formidable use which he had made of these talents, when as a coadjutor of Papineau, he had

been one of the leaders of the French, and yet more on account of the influence which he had exercised over Lord Gosford, who was supposed to have been entirely guided by his advice in that whole course of policy which was so universally and vehemently condemned by the British. He was not less odious to the French, who reproached him as a renegade from his party and his race, and who ascribed to him those coercive measures which they represented as having provoked the insurrection. All the component parts of the Executive Council were in truth generally obnoxious and destitute of moral influence. Lord Durham did quite wisely in keeping clear of them, and in letting the public see that he did so. He resolved at once not to retain the Executive Council, but to form a new one, which might discharge the mere acts of routine to which the Constitutional Act required the assent of an Executive Council, composing it of persons who had either come with him from England, or who had previously taken little part in the politics of the province. Accordingly he determined at the outset to compose his council of his three secretaries, together with the Commissary-General, and Mr. Daly, the provincial secretary, whom Sir John Colborne had recommended as the most unexceptionable of the public officers of the province. This determination shocked the prejudices of the old official body, and not only was it the subject of warm remonstrances beforehand, but on the occasion of the investiture, the Clerk of the Council, though apprised of Lord Durham's intention, attempted to surprise him into swearing in the whole Council as a matter of course. But this attempt Lord Durham checked very decisively, and the same day he put into my hands the draft of a letter, in which I was to inform the Executive Councillors of his determination, and of the grounds on which he had formed it. This document was taken as the programme of a new system of administering the government free of the influence of these local cabals, which were odious to the whole province. The act of dispensing with the old Executive Council, and the statement of the grounds on which it was done, were not unpalatable to the British, and very gratifying to the French Canadians. 'Il a fait déjà une bonne chose,' said an old inhabitant at Montreal to Mr. Viger, who asked him what he thought of the Governor-General; 'il a tué les deux Conseils.'

This measure has, however, been blamed as if Lord Durham had thereby voluntarily deprived himself of the valuable advice of all the persons best acquainted with the mysteries

of provincial government, and of the moral influence of their character and experience. The value of their individual advice and influence I have already shown. It must not be supposed, however, that Lord Durham was insensible to the necessity of local experience and wise advisers. But the truth was that from its official ranks the province could supply him with no advisers on whom he could safely rely. With the exception of Mr. Daly, every one of the body had been so mixed up with the ancient and odious system of exclusive government and jobbing—had rendered himself so obnoxious to one party or the other, or more often to all—and had contracted such violent antipathies, that it would have been most imprudent to trust to their representations and advice. We found the whole machine of government utterly disorganized and powerless. The official body, as the head of whom we might still regard Mr. Sewell, the Chief Justice of the province, was a class perfectly apart from every other, possessing the confidence neither of French nor of British, and exercising not the slightest influence over the public mind. The Chief Justice had for some years ceased to play an important part in politics, and at the period of our arrival his age had wholly unfitted him for active exertions. Of the younger members of the official body none had at all exhibited talents so remarkable as his, or could be relied upon as an impartial or capable adviser of the Government. The Attorney-General, Mr. Ogden, whose office was really the most important in the province, though a much more kindly disposed and honest man than my previous notions had led me to expect that I should find him, was, after all, endowed with so little political knowledge or capacity that it was impossible for Lord Durham to place any reliance on his advice. Our official advisers were, in fact, men of little capacity and great unpopularity. Lord Durham could have gained little from their counsels except the contagion of their party antipathies and the odium of being supposed to be under their influence.

When we came to look around us, and endeavoured to judge of the feelings and situation of the different classes of the population, it appeared at first sight utterly impossible to ascertain the truth about either. The great mass of the population of Lower Canada—those of the French race—appeared to be placed utterly beyond the reach of any communication with the Government. There could, however, be no doubt that this whole population was thoroughly disaffected to the British Government; that it remained brooding over the memory of its late defeat and the annihilation of its recent

predominance; and that it cherished the hope of avenging its imagined wrongs and triumphing over its rulers by means of more combined insurrection and the aid of foreign arms. The greater part of its ancient leaders were fugitives or prisoners; of the few who remained in Canada some were too timid, some too full of resentment, to take any open part in politics; and some, whom we had imagined to possess great influence, appeared to have become objects of suspicion to their countrymen. The Catholic clergy in the diocese of Quebec, under a good and quiet bishop, were loyal and well disposed; those of the diocese of Montreal, under the influence of their bishop, Lartique, were supposed in many instances not to be very well affected. But the priesthood had in great measure lost their influence, and though we made use of them at first as a means of formal communication with their parishioners, and though they sometimes gave us useful private information, they supplied us with no channel of efficient intercourse with the French. With the mass of that body the Government could, in fact, get into no confidential communication. Their desires, as far as they could be ascertained, seemed to be wild and impracticable. All demanded, and perhaps the greater part really expected, that the new Government would attempt to conciliate them by placing things just in the position in which they had been before the insurrection, that Lord Durham would re-establish the Constitution which Parliament had suspended, bring back the Local Assembly with its French majority, grant a complete amnesty to the insurgent leaders, and trust them with all the powers that they had been used to demand during the period of their greatest influence and most exaggerated pretensions. Some hopes of a more reasonable kind, a few of the leaders of the party appear to have entertained from the known liberal views of Lord Durham. But the language of their addresses was constrained and cold; in some cases it was such that Lord Durham felt compelled to check their extravagant demands, and the great body of them immediately relapsed into their sullen and distant apathy.

The leaders of the British party, who were for the most part leading merchants in Montreal, with one or two of the same class in Quebec, were the men who had for some time, through their influence in the Legislative, and subsequently in Sir John Colborne's Special Council, exercised a great influence over the Government of the province, and were little pleased at the change of circumstances, which partly by the necessary consequences of the suspension of the Constitution,

and partly by Lord Durham's own policy, had excluded them from all direct share in the Government. These men, however, had too much tact voluntarily to place themselves in open collision with the Governor-General. The mass of the British population, however, heated by the fierce conflict of the two races, were after all in the main actuated by very laudable purposes. Their main object was the tranquillity and improvement of the province, whereby they hoped that their own industrial occupations might be rendered more secure and profitable.

The subversion of the French ascendency had gone far to satisfy most of them, and the appointment of Lord Durham to exercise the vast powers vested in the Governor-General had been popular with the great mass of them, because from his liberal opinions and known energy of character they expected that speedy and extensive reforms would be made in the obnoxious institutions of the province, and a great impulse given to its internal improvement. The leaders, seeing this tendency among them, had gone with them in it : the cold and repulsive spirit of the meeting at Quebec had found very few imitators in the province ; the addresses of the British were general and warm, and the deputations that presented them were numerous and friendly, and Lord Durham improved their good dispositions by the reception which he gave them. All his answers to their addresses showed how skilfully he had divined the true mode of acquiring their confidence. He appealed boldly and strongly to the feelings which he knew to animate the British population. He spoke always of the greatness of the mother country and of the importance and wonderful capabilities of the colony, and, appealing to them to use every effort to improve its resources, promised them an efficient co-operation on his own part and that of the Imperial Government. By these means he speedily excited among them an enthusiasm and attachment such as no Governor before or since ever aroused. The splendour of his establishment, which had been the theme of ridicule among superficial observers at home, had a great effect on the minds of the British colonists. The civilities, which no one could apply with such grace, because with such dignity, went a great way in conciliating the leaders, who were thus flattered with the belief that if they had lost some power, they had lost none of that consideration which, after all, is what vulgar minds look on as the best part of power. In a very short time Lord Durham had by these means completely gained the confidence of almost the whole British

population. They looked forward with the fullest expectation of finding his measures in accordance with the feelings that he had charmed them by expressing. Our main difficulty with them arose from their wish to push their victory over their opponents further than good feeling or good policy would permit. This was the sure consequence of a dangerous and protracted conflict, and the British wished not only to disable the French so as to prevent their future aggressions, but also to wreak their revenge upon them under the forms of law.

But the state of the Lower Province was not the only subject of difficulty and anxiety. The accounts which we received from Upper Canada were from the first most alarming. The cause of the dissensions and disorders there it was not easy to understand. It was clear that there had been very extensive and violent disaffection. It was also clear that the dominant party there had taken advantage of the recent insurrection to exercise the greatest severity towards their opponents. This had only increased the discontents, and if the tendency to actual revolt had been checked, the number of persons seriously dissatisfied with the Government was at this time far greater than it had been before the insurrection. The Governor, Sir George Arthur, a very weak and timid man, seemed to be divided between his deference for the conciliatory policy dictated by Lord Glenelg and his subservience to the violent counsels of the Family Compact, under whose influence he had completely fallen. From our first landing he sent us the most alarming accounts, one after the other, of the insurrectionary spirit of the Upper Province, and of the formidable plans as well of the refugees, who hung on its frontiers, as of the whole border population of the United States. And before the end of the month his alarms, though exaggerated, received some confirmation from the invasion and outbreak which took place under Morrow, Chandler, and others at the Short Hills in the Niagara district.

But there was quite enough in the state of our relations with the United States to inspire the boldest and calmest mind with deep apprehensions. The Canadian refugees collected along the frontier from New Hampshire to Michigan, rendered desperate by their exile and the ruin of all their prospects in life, were everywhere preparing a threatening invasion, and doing almost as much mischief to the peaceable inhabitants of the Canadas by the alarms which they thus kept up, as could have resulted from actual incursions. They kept the appearance if not the reality of an incessant

correspondence with disaffected persons on our side of the frontier, and they seemed to have the support also of a general and active sympathy on the other side. It was impossible to ascertain what proportion or what class of the American public were prepared to aid the fugitives. But the lawless and wild race that peopled the frontiers, especially the shores of the Great Lakes, were evidently eager for some desperate enterprise of plunder or conquest, and these alone, in the circumstances of that time, and on that defenceless and extended line, were a formidable support to internal disaffection. At public meetings, too, the hostile language of the refugees and their less reputable associates seemed to be countenanced by persons of character and property, who might be supposed to be under the influence of political fanaticism or national antipathy. This open violence was supposed to be abetted by wealthy men who were disposed to speculate on the chances of war, and the profits of a conquest of Canada. The strong and general opinion of the respectable citizens doubtless discountenanced this aggressive spirit. But even among these there existed much sympathy with colonists supposed to be struggling against that tyranny of the mother country, which had driven the forefathers of the American people into revolt. Some remains of old national antipathy to Great Britain yet appeared to exist, and the insolent language in which not merely reckless individuals but even some of the authorities in Canada, especially Sir Francis Head, had denounced the people and institutions of the United States had greatly incensed many of them. A large section of the newspaper press supported the refugees and their allies, and each of the great political parties in the Union seemed occasionally disposed to recruit partisans by assuming a warlike tone towards Great Britain. It was asserted that the Government of Washington was not guiltless of encouraging these feelings, and of conniving at the most unjustifiable enterprises against the British colonies; and it was quite clear that the Federal Executive, even if so disposed, was not very capable of putting a stop to them with sufficient decision. These evils, great in reality, were magnified tenfold by the rumours designedly spread by the many, who on each side of the frontier found their account in fomenting disturbance and alarm.

It was only three or four days after our landing that these alarms were brought to a head by the news of the burning of the *Sir Robert Peel*, a British steamer, in the American waters of the St. Lawrence by a desperate smuggler known by the

name of 'Bill Johnson', who had long haunted the Thousand Isles, and now appeared resolved to carry on his marauding trade under colour of Canadian 'patriotism'. The alarm excited by this desperado's force or designs was, however, light in comparison with that occasioned by the chances of collision with the United States, which this outrage presented. Immediately afterwards this alarm was increased by intelligence of another violation of the pacific relations of the two countries, which had occurred at Brockville, where British sentries had fired on a peaceable American steamboat, the *Telegraph*. The angry feeling on both sides was now raised to the highest pitch; the press indulged in the warmest recriminations, and the more violent residents on each side of the line loudly threatened their neighbours with invasion and reprisals. It seemed hardly possible to preserve peace, and I, who had up to that time indulged the most sanguine hopes of the pacification of Canada, thought that all chance of success in that object would very speedily be destroyed by the breaking out of a war between Great Britain and the United States.

Out of all this evil the vigour and sagacity of Lord Durham brought immediate and great good. On the receipt of the intelligence of the destruction of the *Sir Robert Peel*, he offered a reward of a thousand pounds to any one who should bring the offenders to trial and conviction in the courts of the United States. But while by this step he declared the determination of the British Government to protect its subjects, and thereby conciliated the goodwill of the loyal inhabitants of Canada, he took care to show the utmost respect for the Government of the United States by exhibiting his confidence in its good faith. He determined to take this opportunity of impressing on that Government the necessity of a prompt and cordial co-operation with ours for the suppression of disorders fraught with such danger to the pacific relations of the two countries. For this purpose he despatched Colonel Grey to Washington. This mission was attended with the best results. The friendly declarations of the President and Secretary of State were accompanied by substantial proofs of sincerity. The force on the borders was increased, the strict laws of neutrality recently passed by Congress were at length enforced, and within a fortnight from Colonel Grey's arrival at Washington, the forces of Great Britain and the United States were co-operating on the lakes and St. Lawrence in repressing the disturbers of the common peace.

These precautions against the interruption of peace with

the United States were our first serious business, and while harassed and occupied with this we received most discouraging news from home. Within a week from our arrival in Canada we heard of the discussions which had taken place in the House of Lords immediately after our leaving England, in reference to the appointment of Mr. Turton. The determination of the Tory peers to impair Lord Durham's authority by constant attacks in the worst spirit of faction were not nearly so discouraging as the apparent readiness of Lord Melbourne to abandon and even blame him. The despatches which we received on this subject drew forth answers from Lord Durham, in which he expressed very freely his feelings with respect to the conduct of ministers. Thus from the outset was there distrust and ill feeling between the two parties, owing to what, if not cowardice or indifference, could only be viewed as proof of very malignant perfidy on the part of the Government. And thus, amid all the difficulties of our task on the spot, there hung over us from the first like a cloud the depressing consciousness that we had no support to rely on at home, that faction would make no allowance for the difficulties and dangers of our position, but seize hold of every pretext for discrediting and thwarting Lord Durham, and that to uphold him against such assaults he could rely on no sincerity or energy on the part of the ministers whom he was serving.

It was, however, necessary for him to proceed in his course without faltering, and give some earnest of his intention to carry into effect the reforms which he had promised. The state of the province and all its institutions afforded ample scope for the amending hand, and in the month of June, before our departure for Montreal and Upper Canada, Lord Durham made some considerable practical reforms. The first was the establishment of a very efficient police in Quebec, where before this there had in fact been none. This institution was immediately afterwards extended to Montreal, where the want of a good police had been quite as much felt. The Report gives a view of the disgraceful neglect that had previously existed, from which it will be easy to see for how necessary and important a protection to person, property, and order the inhabitants of these two cities are indebted to Lord Durham.

Among the practical grievances of the province none was more palpable, and certainly none more injurious, than the gross mismanagement of the Crown lands. One of Lord Durham's first objects in his mission was to lay the founda-

tions of such a reform in the administration of them as might render them instrumental in promoting that influx of colonists which was requisite for the accomplishment of his great schemes for the improvement of the colonies. With this end in view he had engaged Mr. Wakefield to come from England about the time of our own departure, having for some time been acquainted with him, and having completely entered into all his views of colonies and emigration. On the 18th of June he issued the Commission for an Inquiry into the state of the Crown Lands in all the North American Colonies. As Lord Glenelg, though well aware beforehand of Mr. Wakefield's coming out with Lord Durham, had, when frightened by the discussions about Mr. Turton, written to prohibit Mr. Wakefield's being employed publicly, I was nominally placed at the head of the Commission. But my other avocations entirely prevented my taking any part in the work; the details of it were accordingly left to my Assistant Commissioner, Mr. Hanson, but the real direction of the whole business was entrusted to Mr. Wakefield, who had no ostensible employment. A very thorough inquiry was instituted at Quebec and Toronto by Mr. Hanson; an Assistant Commissioner was sent to Nova Scotia, New Brunswick, and Prince Edward's Island; witnesses were examined, and statistical information carefully collected. The result of these labours afterwards appeared in that most valuable Report on Crown Lands and Emigration, which forms Appendix B to Lord Durham's Report.

The last of the practical reforms now effected, which I need mention, was rendered necessary by the limited number of an Executive Council, which imposed on Lord Durham the necessity of taking some measures with regard to the jurisdiction in appeals from the courts of law of the province. The Executive Council was, by virtue of an Imperial Act, which Lord Durham could not alter, the sole supreme appellate tribunal of Lower Canada, and it was necessary that its sittings should be held during the early part of the month of July, when some of the members of the Council would be absent with Lord Durham in his visit to Upper Canada. He could take no step to provide against this difficulty without becoming sensible of the absurdity of the system by which the decision of the most difficult and important legal questions in the province had been left to a numerous body of persons, for the most part wholly ignorant of law. He took this occasion, therefore, instead of merely completing the quorum, to constitute a really efficient Court of Appeal on sound

principles. He composed it almost wholly of the highest and ablest judges of the province. In order to keep up the necessary quorum he added Mr. Turton, whose great legal knowledge and experience rendered his presence in the Court most useful, and for the same reason he was obliged to add my brother. The Court as thus constituted held only these single sittings. But the opinion of both bar and suitors was unanimously in favour of the soundness and importance of this reform. It was agreed on all hands that so efficient a Court of Appeal had never before been seen in the province.

But the most important and difficult task remained to be done by the disposal of the prisoners who had filled the gaols since the suppression of the insurrection. This was a matter wholly foreign to the true purpose of our mission; it had been thrown upon us by the timidity of Sir John Colborne, who, swayed backwards and forwards, as all the authorities in the Canadas were, between the ferocity of the dominant party in the province and the more enlightened orders which came to him from England, determined to shift the responsibility of this most delicate business from himself on to Lord Durham. The difficulty of disposing of the prisoners had in no degree been diminished by the delay. It is true that the leading men of the British party had begun to entertain more rational and humane feelings than had animated them on the first suppression of the insurrection; and the mass of the British, though still thirsting for some blood, were, as the event proved, very easy to be reconciled to a lenient course. But the difficulty of getting any punishment at all inflicted by the verdict of a jury had been only increased by the lapse of time, and though every one in the province was convinced that the allowing the prisoners to escape without any punishment would have the most dangerous results, we felt that public opinion in England would revolt from our having recourse to military tribunals so long after the cessation of the insurrection and martial law. We might, by altering the jury law, or by using the influence of Government over the sheriffs, have secured a British jury, which would have convicted the innocent and guilty alike. But besides the mischiefs of a public trial, which must have brought to light many things that for the honour of Government and of individuals, as well as for the best interests of order, it was most important to bury in oblivion, and the publication of which would probably have rendered it necessary to deal severely with those who should be proved to have been leaders in the insurrection, we all felt that it would be far more for

the permanent interests of liberty and for the honour of the British Government to secure the punishment of a few guilty individuals by an open deviation for that purpose from the ordinary forms of law, than to make new laws permanently depriving the French Canadians of the guarantees for equal justice, or to set the dangerous precedent of packing a jury.

After much deliberation on this matter, Mr. Turton and I, to whom the investigation of the details had been left, came to the conclusion that the best course would be to punish the leaders certainly, but lightly, by means of an *ex post facto* law. When this was first proposed to Lord Durham he instantly saw what an outcry would be raised in England against an act so contrary to our notions of liberty and law; and he refused to take any step of the kind unless it should be requested by the prisoners themselves. The prisoners, who expected the Government to avail itself of its power of packing a jury, and ensuring their capital punishment, were very ready to petition to be disposed of without trial, and as I had in the meantime ascertained that the proposed mode of dealing with them would not be condemned by the leading men of the British party, Lord Durham adopted the plan proposed, and on the 28th of June, the day of Her Majesty's coronation, issued the famous Ordinance with respect to the prisoners, and the Proclamation of Amnesty. The ultimate results of this bold step neither Lord Durham nor those with him are responsible for; its immediate effects were even more satisfactory than we had ventured to anticipate. In America its success was complete. The British population of Lower Canada, after a few partial indications of dissatisfaction, universally acquiesced in it. The French, who were not disposed to be satisfied with anything but an entire concession to all their most unreasonable views, were awed by the decision, and conciliated by the lenity of the act. After a while they ceased to murmur at it. But its reception in the United States was most satisfactory. All parties agreed in extolling it as a noble, wise, and liberal act. The very newspapers that had previously been most violent in assailing the British Government changed their tone for a while. And the revulsion of feeling throughout the Union was general and permanent. From that hour the feelings of national jealousy and political sympathy gave way to that of admiration of Lord Durham. From that hour the disaffected in Canada ceased to derive any aid from the public opinion of our neighbours, and among our difficulties we had no longer to contend with the chance of war with the United States.

I think there was only one error with which throughout this business Lord Durham is justly chargeable, and it was an error to which I must attribute most injurious effects. He ought, in announcing such a step to the Home Government, to have given an ample and detailed statement of the grounds on which he had felt it right to compose his Special Council, and dispose of the prisoners as he had done ; and I fear that to the absence of some such explanation, which might have been laid before Parliament, and served to convey a knowledge of the real state of affairs, is to be ascribed that misapprehension on these points which enabled Lord Durham's assailants to produce any effect on the public mind. The composition of our Special Council was calculated to be misunderstood by those who did not know how difficult it would have been to find any better materials in Lower Canada. If Lord Durham had fully explained the grounds of his Ordinance, the public at home would readily have appreciated his manliness in composing his Special Council so as in fact to shift no responsibility off his own shoulders. And it could easily have been shown that had he composed the Council, as Sir John Colborne had done, of residents in the province, he must in the existing state of things have thereby placed the power of legislation in the hands of one party, which would assuredly have used them, as had been done under Sir John Colborne, for the promotion of its own interests and the oppression of its opponents.

Immediately after the publication of the Ordinances, Lord Durham, accompanied by Sir Charles Paget, the admiral on the American station, set out for Montreal. Our departure from Quebec gave occasion for a very sullen demeanour on the part of the British inhabitants, who were by no means pleased with the lenity of the Ordinances. We heard that a still more unfavourable feeling would probably be exhibited on our arrival at Montreal. It was about the middle of the day of the 5th of July when our steamboat cast anchor opposite to that city, and we instantly received the visits of the authorities and principal inhabitants. The state of terror and uncertainty which then existed throughout the Canadas was testified to us by a hundred alarming rumours that reached us in the course of the day. The full effect of the Ordinances had not yet had time to develop itself. We had every reason to believe that the British inhabitants of Montreal, who, having been in the very midst of the preceding party struggles, had naturally contracted a greater violence of feeling than even the rest of their race in the province, would very strongly

exhibit their disapprobation of the lenity of the Ordinance. Nor had this measure had time to exhibit its effects on the public opinion of the United States, and the country was inundated with alarms of fresh demonstrations of American 'sympathy' with the insurgents. I recollect well that during the twenty-four hours that elapsed between our arrival in the port and our landing, there were brought to us no less than three distinct and circumstantial accounts of 'Bill Johnson's' invasion of the provinces at the head of a large force of rebels and 'sympathizers', he himself being reputed to have made his appearance at no less than three different points at the distance of about five hundred miles from each other. It had required little time to learn to give very little weight to any rumours that we might hear in Canada, and these produced little impression on us except as far as they went to convince us of the extremely disorganized state of men's minds in the province. Lord Durham had not lost the opportunity afforded him by the visits of the leaders of the British, who on their return spread the most favourable report of his views. An instant change was produced in the minds of this people, who seem to me, from all the experience I have had of them, to be, of all the English race that I ever met with, the most excitable, and the most susceptible of new impressions. When Lord Durham landed on the 6th, the whole city poured out to meet him, and received him with the utmost enthusiasm.

We remained some days at Montreal, and it was here that Lord Durham, in a private interview with a large number of the British leaders, developed for the first time an outline of his views with respect to the permanent settlement of the colonies. These I shall hereafter detail; the only effect which this communication could have in this stage of affairs was that of being regarded as a flattering proof of confidence in the persons to whom it was made. In the answers to the various addresses which he received from different bodies, Lord Durham availed himself of the opportunity of making known the general principles on which he meant to administer the government of the province. He well knew to what account he could turn these occasions of ceremony, and his answers were all framed with the same great principles in view, the various aspects of which the various addresses enabled him to bring before the public. The chord which he touched in addressing all these bodies was the determination of Great Britain to uphold her connexion with these provinces, of which he painted the vast resources, and the ease with which they might be developed. By the consideration of

their common interest in this he urged both parties to union and tranquillity, and, while he impressed on the one the necessity of co-operating in the reform of their defective laws, and of casting aside the petty jealousies of race, he exhorted the other to an oblivion of the insurrection, and of the long course of irritating events that had preceded it.

On the 10th we left Montreal, and soon entered Upper Canada, where during our progress up the river Lord Durham received addresses from the various towns which we passed, indicative, in spite of the violent dissensions that existed in the province, of a pretty unanimous resolution to confide in him. But every step that we took in this province showed us the fearful extent and nature of the divisions that separated classes and parties. These had just then unhappily been very seriously augmented by the very inopportune arrival of an opinion of the Attorney- and Solicitor-General of England in favour of the validity of Sir John Colborne's unpopular creation of the 'rectories', and from one end to the other the province was agitated by a revival of the irritating discussions on the question of clergy reserves. We passed unharmed and unassailed through the romantic region of the Thousand Isles, where indeed nature seemed to have invited the attempts of 'Bill Johnson' and his gang, and went straight to the Falls of Niagara, where Lord Durham had very wisely ordered a considerable display of military force to be made. At this spot, the general rendezvous at this season of large numbers of travellers of the wealthy class of the United States, the reviews which now took place attracted a crowd of spectators from the opposite side, and the presence of the Governor-General, of the authorities of Upper Canada, of the Admiral, and of a numerous and most efficient military force of every kind was calculated to impress on our neighbours the value which the British Government was disposed to attach to the maintenance of her empire in the Canadas, and of the efficient means by which that determination was backed. The hospitalities that Lord Durham very widely extended to the visitors from the United States, were productive of even more useful results, because they excited in them better feelings than the mere dread of our arms. After the studied reserve that it had been usual for the leading persons in the British provinces to maintain towards their republican neighbours, it was most gratifying to the latter to be received with cordiality by the nobleman of the highest position with whom they had ever come in contact. I have often said to those who (after the fashion of petty carping, by which we were assailed) used to

dilate on the seven or eight hundred pounds that were spent in the course of Lord Durham's visit to Niagara as a monstrous expense, that, considering the results attributed to it, a million of money would have been a cheap price for the single glass of wine which Lord Durham drank to the health of the American President. For such had been the absurd demeanour of the authorities in the British colonies towards those of the United States that it actually seemed as if the latter Government were not completely recognized by ours. This mere ordinary civility, therefore, on the part of the Governor-General was taken by the Americans present, and by their countrymen at large, as indicative of a thorough change of feeling and policy, and as a pledge of goodwill towards their country. Of the change thereby produced in their feelings, we had speedy and gratifying proofs, and these acts of civility created among the mass that regard for Lord Durham which the wise and humane policy of his government had in great measure already produced among the more thinking. Henceforth, instead of incivilities being offered to every British officer who chanced to cross the lines, the citizens of the United States vied with each other in hospitality and respect to them. Lord Durham continued this wise course after his return to Quebec, where he made a point of receiving the numerous travellers from the United States at his house during the summer. These were in themselves but slight acts and easy observances, but they were parts of a great view of international relations, and produced great and good effects on the feelings and intercourse of two nations. It is only the man of statesmanlike mind who can produce a great result out of things so small as an invitation to dinner, or the drinking a glass of wine

With respect to the events which occurred during this visit to Upper Canada I am little qualified to speak from personal knowledge, as my unfortunate illness compelled Lord Durham to leave me behind him on his return. He visited a considerable part of the province, and here, as in Lower Canada, he made the answer to every address the means of appealing to those feelings of pride in their mother country, and interest in the prosperity of the colony, by taking advantage of which alone he saw that Canada could be secured. This purpose was predominant in Lord Durham's mind. When from the Canadian shore he looked across the entrance of Lake Erie, and saw the noble buildings and crowded harbour of Buffalo, he longed to divert the stream of commerce to the British shore, and by means of the We land Canal to give to Canada the trade between the Great Lakes and the sea. With this

view he wrote that despatch in which he impressed on the Home Government the necessity of contributing a large sum of money to complete the great plan of internal water communication which the Assembly of Upper Canada had commenced, but had found beyond its powers of completion. This proposal was not, however, adopted by ministers. Lord Durham subsequently proposed by means of such provincial resources as he could command to aid in the improvement of the navigation of the Ottawa, the most important tributary of the St. Lawrence, and hardly inferior in importance to the main branch of the river. But his abrupt departure prevented his taking any steps for this purpose.

In the short period which had elapsed between our first arrival in Lower Canada and our return from the Upper Province, a very great and beneficial change had already been wrought in the state of things. The change in our position with respect to the United States was the most important; no imminent risk of war any longer harassed us and deranged our plans; on the contrary, the favourable feeling of the States came to the aid of our Government and operated for us in public opinion in Canada. The British party, in spite of the secret dissatisfaction of some of its leaders, had very generally rallied round Lord Durham. The French had become somewhat more reconciled to their lot, and though secret intrigues still continued to be carried on among *habitans*, the change of feeling in the United States had convinced the leaders of the refugees, as well as of the disaffected in the province, that their main support, which had been the sympathy of their neighbours, was altogether withdrawn. The opportunity was now afforded for setting about those internal reforms which Lord Durham had promised in the *Gazette* that contained the Ordinance respecting the prisoners.

The reform which the British population had chiefly at heart was the commutation of the feudal tenures. With a view to this Lord Durham proposed to begin with two measures which might be regarded as parts and preliminaries of the general scheme. The first of these was the commutation of these tenures in the city of Montreal, where their operation was the most injurious, where the disputes respecting the title of the Seminary of St. Sulpice, an ecclesiastical body, to whom the seigniory belonged, rendered that body more ready to accede to a commutation than the owners of seigniorial rights generally were. The second was the measure of a general registry of titles to land, which besides being a necessary accompaniment of any general commutation of tenures, was

eagerly desired by the British population as a most valuable substantive reform. The preparation of a measure for this purpose was confided to Mr. Turton, who for that end proceeded to institute extensive inquiries, and consulted the leading lawyers of the province, both French and English. The settlement of terms of an arrangement with the seminary had been entrusted to me, and before our journey to Upper Canada, I had already entered into negotiations with the superior of that body. The outlines of the plan, which appeared to me fair and expedient, and which were indeed almost identically the same with those proposed by Lord Gosford's Commission, had been communicated by me to some of the leading British inhabitants of Montreal. The matter had naturally been a good deal spoken of, the nature of the suggested arrangement became known, and some of the more stirring and unreasonable of the British party commenced an agitation among the more violent of their own race and religion against terms, which they described as too favourable to a French and Catholic community. When Lord Durham visited Montreal on his return from Upper Canada a petition got up by these persons was presented to him, remonstrating very warmly against the arrangement, and not very covertly insinuating, after a fashion too common in the private conversation of those who in both Canadas affected the greatest loyalty, that the continuance of that loyalty would in a great measure depend on a compliance with their demands. This insolent threat, as well as the bigotry exhibited in the petition were promptly rebuked by Lord Durham, and his decisive conduct not only checked the extravagance of the leaders of this fanatical movement, but elicited a strong counter-expression of opinion. At a public meeting held on the subject a few days after Lord Durham's answer to the address, the more moderate of the British expressed their disapprobation of the petition, and the Irish Catholics exhibited such marked indignation at the insolent tone adopted towards their clergy and religion that it became obvious that the bigotry of a few individuals had gone near to bring about that separation between the Irish Catholics and the remainder of the British race, which it had been the great care of the British leaders in their recent conflicts with the French most cautiously to avoid. The meeting broke up in disorder, all agitation on the subject ceased, and the Government was left to complete its arrangements with the seminary at its leisure.

Two subjects of no less importance than even the com-

mutation of the feudal tenures were at the same time undertaken. A Commission was issued for an inquiry into the state of education in the province, and another to inquire into the state of its municipal and local institutions. On the last of these Commissions it was resolved to employ a person who had acquired a rather unenviable notoriety by the extreme violence as well as ability with which he had advocated the views of the British party. This was Adam Thom, who had been for some time the principal writer in the *Montreal Herald*. The talents and energy of this man, originally a very humble schoolmaster in the north of Scotland, had raised him to the possession of the greatest influence over the mass of the British party, and to them the confidence now reposed in him by the Government was highly gratifying. Of course it was just as unpalatable to the French Canadians, whose press rang with denunciations of the 'execrable' Thom. The only really bad result of this was the loss of the assistance of a respectable and influential French Canadian, who had consented to serve on the Commission, but declined when he found that he was to be associated with one who was regarded as the enemy of his race. But I am not at all inclined to doubt of the wisdom of this step. Mr. Thom was very fit for the business assigned to him, and performed his task with great integrity and judgement. Nor was his utility confined to that particular business. Throughout the rest of the mission he rendered himself most useful by the information which he supplied, and by his influence over the mass of the British population.

His services were even more essential after our arrival in England, whither he returned at the same time, and his assistance in furnishing various pieces of local information and corrections of detail were of great value to the Report. But his appointment was of still more importance on account of the principle of selection, which the employment of a man so obnoxious to one race indicated. It was a great thing to show the violent parties in Canada that their denunciations should not succeed as heretofore in excluding men of ability from the public service. It was a great point also to take an able and energetic man out of the mischievous occupation of party agitation to enlist him in the service of the Government, and to employ him where his energy and talents would do good instead of harm. Had Lord Durham's government continued he would have shown that he meant to pursue the same course with both races alike. For when the events occurred which put an end to his mission, he was in great

hopes of securing the services of Mr. Morin, a French Canadian of great industry and knowledge, of amiable and upright character, and who perhaps, next to Mr. Papineau, had occupied the foremost position in the debates of the Assembly; and who, though subjected of course to much animosity and many accusations, appeared to have kept quite aloof from the recent insurrection. The education inquiry was entrusted to my brother, who with great perseverance and judgement undertook the high but difficult task of uniting the hostile races in the same schools and colleges, and in spite of a good deal of opposition from the bigots of every race and creed, devised a very satisfactory scheme for the purpose, which will be found detailed in the Appendix D to Lord Durham's Report.

The multitudinous business of the more ordinary administration of the Province of Lower Canada occupied of course much of Lord Durham's time.

Every question of magnitude that arose in British North America was referred to him. The disposal of the political prisoners in Upper Canada was the subject of a long and warm correspondence with Sir George Arthur. An application to Lord Durham from the wives of Chandler and Waite, two of the unhappy men condemned to death for what was called the Short Hills insurrection, occasioned his interference in the first instance. This was somewhat angrily resented by Sir George Arthur. I need not enter into the particulars of a discussion which is contained in the correspondence printed at the end of Ridgway's edition of the Report, and which does honour to Lord Durham's humanity as well as to his political wisdom. The result was most satisfactory, for after earnest entreaties from Sir George Arthur to be allowed to execute at first four, and then at least one of the convicts, the lives of all these unhappy men were saved, and what was even more important, Sir George Arthur was induced to proclaim a general amnesty, by which the fears of the various families compromised in the late risings were set at rest, and the greater part of the political exiles, who molested the frontier, were permitted to return, and became harmless at home.

Among Lord Durham's labours during this period I must not forget the excellent dispatch of the 9th of August. This document, in which for the first time he developed for the information of the Home Government his views of the general state of Lower Canada and the causes which had produced it, describes very fully the hostility of the French and English races, the objects and characters of the contending parties, the state of feeling which the recent events had produced in

the United States, the abuses of the internal government of the province, and the general want of confidence on the part of its inhabitants in the Imperial Executive and Legislature. The views contained in this dispatch are in fact the same as those subsequently given with much greater fullness in the Report, and the great value of the dispatch consists in this coincidence between it and the Report, inasmuch as it proves that the views expressed in the latter were not taken up by Lord Durham after his return to England, but that, confirmed by intervening experience, they were in effect the same views as those which he had communicated to the Ministry before the occurrence of the events that cut short his mission.

Lord Durham, before leaving England, had, with a view principally to having some definite subject of discussion with the persons whom he might consult in the province, prepared the outline of a plan for the future government, founded on suggestions which he had received both from public documents and discussions, and from individuals who had paid a great attention to the subject. Soon after his arrival in Canada he had taken advantage of visits from the Lieutenant-Governors of what are commonly called the Lower Provinces, to desire them to send to Quebec such persons of every party in their respective colonies as they might consider capable of giving the soundest opinion on such a subject. Accordingly, on the 12th of September, deputations from Nova Scotia and Prince Edward's Island came to Quebec, and in a few days after arrived that from New Brunswick. Great praise is due to the Governors for the skill and impartiality with which they had selected the deputations. Their members appeared to have been very fairly selected as the ablest representatives of the different parties in the colonies. They gave us indeed a very favourable opinion of the state of society in the Lower Provinces. Generally men of plain manners, they exhibited also a great deal of plain good sense and fairness. Opposed in provincial politics they could discuss even their own points of difference with candour and moderation. The deputation from Nova Scotia in particular pleased us highly. Some of its leading members were persons not only of striking ability, but of a degree of general information and polish of manners which are even less commonly met with in colonial society.

The scheme which Lord Durham proposed as the basis of discussion was one on the principle of a federative union of all the existing colonies in North America. The idea of this had been originally thrown out by Mr. Roebuck in the House

of Commons, and the suggestion had met with the approval of Sir Robert Peel, as well as of Lord Howick, Mr. Ellice, and other persons who had paid much attention to colonial matters. The plan appeared to offer a chance of putting an end to existing discussions, of overwhelming the enemies of British connexion in the Canadas by the unanimous loyalty of the Lower Provinces, of extinguishing the pretensions of French nationality, and at the same time of leaving each different community in possession of its own laws and of the power of managing its own local affairs. The plan had in Lord Durham's eyes the still greater merit of combining these large and richly endowed provinces for common purposes of improvement, of forming out of these divided and feeble elements a single community with vigour as well as singleness of action, and of thus raising up on the northern frontier of the United States a rival union of British colonies, which might ere long, by the development of its vast internal resources, form a counterbalancing power on the American Continent. The same measure would, he hoped, not only make these colonies powerful, but also incline them to use their power no longer for the purpose of thwarting, but for that of supporting, the Imperial Government. In order, however, still further to guard against the contest of races, he entertained the idea of dividing Upper and Lower Canada into three instead of two Governments. The westermost of these was to have been formed entirely of the furthest portion of Upper Canada, where the population would have been wholly English. The middle part was to be composed of a portion of Upper Canada, together with the whole or the greater part of the districts of Montreal and the Eastern Townships in Lower Canada. An English majority would by this means have completely overpowered the French population of that district in which, from the near approach to equality of the two races, the hostility between them had been the most mischievous, and in which the French were far more turbulent and ill affected than in any other parts of the province. The third government, comprising the country from Sorel to the eastern extremity of Canada, would have been entirely French. But the French of the greater part of this district, particularly those below Quebec, are so comparatively quiet a race, there is such a paucity of English there, and consequently so little collision occurs between the races, that we had every reason for thinking that such a French community might have proved tolerably tranquil and well affected. At any rate the disturbances of a single province would, under the federal

system, have been local, and need not have disturbed the general legislation and tranquillity of British North America.

Our conferences with the deputations were harmonious and satisfactory. I need not now specify the effects produced on our opinions by these discussions, nor how it was that our views (for it was so not only with Lord Durham, but with all of us) gradually took the shape in which they were embodied in the Report. The urgency of a union was more forcibly impressed on our minds in the course of our conferences, and still more by subsequent events. And as we discussed the details of a plan, so the merits of a federal scheme faded away by degrees, and we became convinced of the propriety of such a complete legislative union of the provinces as was afterwards proposed in Lord Durham's Report. The language held by the deputations showed us that the public mind of all the provinces was prepared for a union, and that such a measure would be conducive to their separate interests as well as to the common good of the empire.

In the midst of these occupations we received the astounding news of the disallowance of the Ordinance of the 28th of June. Previous intelligence had by no means prepared us for this. Lord Durham had received not only a dispatch from Lord Glenelg, but also an autograph letter from the Queen highly approving of the Ordinance. We had no reason to believe from the reports of the first debates on the subject in Parliament that any person would join Lord Brougham and Mr. Leader in their outcry against the Ordinance. Lord Durham had always had misgivings as to the result. I will own that I had felt none. I thought that the merciful and pacifying purpose of the Act would have so pleased the great mass of our countrymen that there would have been no dissent from their universal approbation. I still think that I judged the mass of my countrymen aright, and that by them Lord Durham's Ordinances were fairly appreciated and fully approved. But he counted more accurately than I did on the selfishness of parties and the consequences of intrigue. I recollect well the day that the news arrived. I happened, amid my usual fatigues, to have that morning a few hours of leisure, and at Lord Durham's request I went with him on an excursion in the neighbourhood. The incidents of this little journey are fresh in my recollection even now ; I well remember what we saw, and how we talked, and how we laughed under the bright Canadian sky in that fine autumn day. As I was walking back from the carriage to my lodgings some one told me the news in general terms, but I supposed it to originate

either in joke or in mistake, and hardly thought again about it. However, when I got into the carriole to go with Mr. Turton to dinner, he told me that the report was quite true, and when I arrived at the house Lord Durham sent for me, told me the news, and, almost more by manner than words, let me know that his mind was made up to resign his government. I saw indeed from the first that such would inevitably be the result, and that here—for a while at least—was destroyed the whole fabric of improvement that Lord Durham had with so much labour and anxiety been building up during the period of his government.

Whenever up to this time the least mention had been made of resignation, I had invariably combated it as a thing not to be for a moment thought of. I had recently done this with great warmth; I had represented the trust confided to Lord Durham as similar to that of the defence of some besieged outpost of the empire, and I had asserted that in his case, as in that of the military commandant, success would be the only proof that our countrymen would accept of the efficiency of his defence. Great, unexpectedly great, as was the additional discouragement to which he was now exposed, I think —I even then thought—that it would have been wise, had it been possible, for Lord Durham to have held the post. His reasons for quitting it have been stated at full length in his dispatches and proclamation, and they unanswerably show the fearful chances of failure in his great purpose of maintaining and pacifying Canada, to which the factious conduct of the Tories and the more fatal abandonment of ministers had exposed him. I think also that they quite clearly showed that the persecution of which Lord Durham had been the object from the onset of his government, and the mistrust of his power occasioned by the recent occurrences, had placed difficulties in his way from which another governor would in all likelihood be free. Still I think that had he met the difficulties with his accustomed energy, he would in all probability have succeeded, and that the honour and advantage of success after such discouragement would have been so great that it would have been quite prudent for such a prize to run the risk of a failure, for which under the circumstances of the case nobody could have blamed him. I approved of his resignation on a ground which now, alas! I may very plainly mention. Without surmising the real nature or extent of the mischief, I saw that Lord Durham's health was fearfully affected by all that had passed. Such a degree of nervous agitation did his disease produce, and such a reaction of that

agitation on his bodily health was constantly going on, that it was evidently impossible for him to bear up against the anxieties and labour of his government under existing circumstances, and display that energy and promptitude of decision which had so eminently distinguished him when his health was better. I felt convinced—and unhappily it is now too clear that I was likely to be right—that Lord Durham's life would very soon have been the sacrifice for his continuance in Canada, even for two or three months, and that at any rate he was liable to have his energies impaired by illness at moments in which any relaxation of them would have been fatal to success. I lamented his resignation then : I deplore it yet more deeply now ; but I approved of it then, and approve of it now, as an act done in compliance with a stern and sad necessity. I must not be understood as admitting that his return home was calculated to injure the interests of the province ; on the contrary, I still think that in the difficulties then impending the preservation of the province was more *safe* in the hands of Sir John Colborne than in those of Lord Durham, weakened as they were by the repeated proofs of his being unsupported at home. It is for his own sake—for the sake of the influence which his continuance in his government under such circumstances would have ensured him—and for the sake of all the strength that would thence have accrued to the popular cause at home, that I regret that the state of his health compelled him to abandon this chance of fame and power, and that even this sacrifice came too late to avert the blow which disease had already struck.

The declaration of Lord Durham's intended resignation spread terror and grief throughout British North America. The delegates from the Lower Provinces gave utterance to the first expression of regret at his departure, and of entreaty that he would remain, and it was in answer to them that he first publicly announced his intention of resigning. In consequence of this, addresses of a similar nature came from all parts of both the Canadas. The address from Quebec, presented in the hall of the House of Assembly, gave occasion to a burst of the most enthusiastic popular feeling. Large deputations brought the addresses from Kingston, Toronto, and Montreal, and expressed the alarm with which the whole British race in Canada regarded the attacks made on Lord Durham, and the consequent calamity of his resignation. The French—though some of the more honest and sagacious of their leaders were inclined to express openly their regret at an event, which deprived them of their own efficient protec-

tion from the violence of their antagonists—maintained their usual sullen and impassive demeanour. But the feeling and the movement of deep regret extended throughout the British of every party in the two provinces. Even those who had the most violently condemned his policy—even the most reckless of the Family Compact of Upper Canada—expressed the common feeling in terms proving how sincerely they participated in alarm at Lord Durham's departure, if not in approval of his policy.

These demonstrations did not, however, affect the grounds on which Lord Durham and all around him saw that his resignation was absolutely necessary. Indeed these considerations, together with the news which reached us from every quarter of the preparations for fresh insurrection, rendered it incumbent on Lord Durham at once to put the fact of his resolution beyond a doubt, and to take measures for his instant departure, in order to end that species of interregnum which cannot but exist when a governor has declared his intention of giving up his office. With this view, he determined on leaving the province at the close of October, and he announced this by the famous Proclamation which he issued on the 9th of that month.

In this Proclamation Lord Durham had two great objects in view. The first was that of calming the excessive agitation which his abrupt departure from Canada had occasioned, by showing that he did not despair, and that he yet hoped by immediate and energetic remonstrances at home to effect that good which he could not secure by remaining in Canada. The second was certainly that of vindicating himself by the only public means in his power. He was much censured for publishing what has been considered an inflammatory appeal from the Imperial Government and Legislature to the people of the colonies. It must not, however, be matter of surprise that after the unusual mode in which Lord Durham had been assailed in Parliament and abandoned by the Ministry—after his policy had been condemned without hearing or explanation, that he should think it necessary to step somewhat beyond the line of official usage, in order to protect himself against those who had used him thus ungenerously. As for the inflammatory effect which it has been said that the proclamation was calculated, if not intended, to produce, the answer simply is that it both purported to seek, and did in effect produce, precisely the opposite result. No disorder, no increase of disaffection ensued; on the contrary, all parties in the province expressed a revival of confidence; and we had it

very clearly shown to us that one effect of the Proclamation had been that of inducing a much more general readiness to enlist in the volunteer corps, and take other measures for the defence of the provinces (see Note A, at the end).

There was, however, one necessary consequence of the great hurry in which Lord Durham was compelled to take his departure when once determined on, that I much regretted. He had originally purposed embarking at New York, after previously visiting Washington. The knowledge of this intention had created the greatest satisfaction in the United States, and the people had made preparations for giving him an enthusiastic welcome. Shortly after, in my passage through the States, I heard that the corporations of the various great cities on his line of way had made arrangements for meeting him at different points, and conveying him from one to the other. In fact he was everywhere to be received by the local authorities as a public visitor. On our return to England he was informed by Mr. Stevenson, the American Minister, that at Washington he was to have remained with the President at the White House as a national guest—an honour never before conferred on any one but Lafayette. Such a deep impression had Lord Durham made on the people of the United States: nor has that impression been yet effaced: to the hour of his death his popularity in that great country remained undiminished. I regret that no visible exhibition of this popularity occurred in the manner proposed, both because it would have been a great support to Lord Durham at home, and because it would have been useful in teaching our public men in what way and with what ease mere honesty and courtesy can secure the goodwill of that great kindred nation. But the intimations of meditated insurrection were so numerous and strong that Lord Durham felt that he must lose no time in returning home, and that it would be unseemly in him to be travelling in the United States at a time in which the seat of his late government might probably be a prey to civil war.

During the short time that remained before his departure, he occupied himself in bringing to a close or advancing the various inquiries and reform which he had commenced. The Registry Bill was completed, and received the sanction of the principal lawyers of both races in the province, as well as of those persons who had long taken the lead in demanding such a measure. The agreement with the Seminary of St. Sulpice was arranged, and, though Lord Durham did not choose, on the eve of quitting his government, to use his strictly legal

authority to give a definitive sanction to measures of such importance, to this arrangement made with the assent of all the parties may be ascribed the enfranchisement of Montreal from the feudal restraints that have long obstructed its prosperity. The Commissioners of Education and Municipal Institutions were left to complete their tasks, of which the results afterwards appeared in the Appendix to Lord Durham's Report. The Commission on Crown Lands had continued its labours, and already settled some most important practical questions. The Militia claims had been adjusted by the proclamation of September 8, and on the 31st of October, the very eve of his departure, Lord Durham issued a proclamation settling the intricate question of the rights of 'squatters' on the Crown lands. But a question of still greater magnitude was decided by Lord Durham in the Report on the subject of escheat in Prince Edward's Island, contained in the dispatch of the 8th of October. The abuse of the proprietary rights of the absentee landowners of this colony was the mischief that had blighted its prosperity in the very bud. The Legislature of the island had in vain passed Bill after Bill to authorise the escheat of waste lands on the principles usually acted on in almost every new country, and in vain had the Governor of the island repeatedly recommended the Crown to give its sanction to such a measure. The proprietors in England had more weight with ministers than the desires and interests of the whole colonial community. Lord Durham's dispatch secured the Royal Assent to a law of escheat; and if Prince Edward's Island shall hereafter prosper, it will be mainly owing to this interposition on his part.

I need only mention one other act done by Lord Durham before his departure from Canada. The two chief-justiceships of the province were resigned by Mr. Sewell and Mr. Reid. Lord Durham, without any solicitation, instantly conferred the office of Chief Justice of Quebec, the highest judicial office in the province, on Mr. James Stuart. This gentleman, by universal consent the first lawyer in the province, and the ablest as well as most influential leader of the British party, had been Attorney-General during Lord Aylmer's government; and having rendered himself obnoxious to the French majority, had been impeached by the Assembly, and an address had been presented for his removal. That he had acted with a good deal of intemperance in one or two instances cannot be denied, but beyond this there was really no foundation for the charges made against him. But though this was acknowledged by Lord Aylmer and the Colonial Secretary,

Mr. Stanley, the former removed him from office and the latter sanctioned the removal. On any rational system of executive responsibility the mere hostility of the Assembly ought to have been in itself a sufficient ground for the removal of a man from an important executive office, but the dismissal of Mr. Stuart by those who strenuously combated that principle, amounted to a recognition of the truth of the charges made against him, and that recognition on the part of men who believed him innocent of all the serious articles of accusation was a most flagrant and cruel act of injustice. This injustice Lord Durham repaired, and to the great satisfaction of the whole British population, made Mr. Stuart Chief Justice of the province. A day or two after Lord Durham's departure, Mr. Stuart called on me, and as he spoke of his deep and lasting gratitude to him for having thus relieved him from the stigma that had so long rested on his name, the tears actually burst into the eyes of that hard old man. But I do not find that Mr., now Sir, James Stuart, who since Mr. Poulett Thomson's arrival has been the chief director of the Government, has ever shown any care for the interests or memory of him who lifted him from the very dirt into the highest judicial position in the province.

It was on the 1st of November that Lord Durham sailed from Quebec in the *Inconstant*. A sad day and sad departure it was. The streets were crowded ; the spectators filled every window and every house-top ; and, though every hat was raised as we passed, a deep silence marked the general grief for Lord Durham's departure. His own presentiments depressed him, and those about him, for he had told me and others also that he did not expect to reach England alive. When I left him (for I had to stay some time behind to collect materials for the Report) I had as a member of the Executive Council to repair to the Castle, where Sir John Colborne was to be sworn in. There were but few people in the room, but the countenances of the old Executive Councillors seemed to mark the restoration of the ancient system of administration. A good many military officers also were present ; they seemed to think that their ascendancy also was restored. The ceremony was silently hurried over, and when it was finished I went to the window, which commanded a full view of the harbour. The cannon were just sounding in honour of his successor's installation, when the frigate that bore Lord Durham was slowly towed out of the harbour. The sky was black with clouds bearing the first snowstorm of the winter, and hardly a breath of air was moving. I returned to my office, and, some

hours after, from the window, which commanded the wide basin below the city, I saw the dark form of that ill-omened ship slowly, and as it were painfully, struggling on its course. My heart filled with many a bitter regret, many a superstitious presentiment, and alas! many too true misgivings. We dined that evening at Mr. Daly's, and the party was composed of Mr. Turton, my brother, and myself, forming with him the last remains of Lord Durham's government. It was a mournful meeting, and none mourned more deeply than our kind and honourable host, who said that with Lord Durham's departure all his hope had gone. A heavy fall of snow was setting in as we left the house, and the very morning after the winter was completely set in. The next day we heard the alarming report that Lord Durham's worst forebodings had been nigh being fulfilled in the most fearful manner by a fire on board the ship. This was perfectly true; not so the reports which reached us every now and then during the next fortnight to the effect that Lord Durham had been forced to put into Halifax, or that he had been driven ashore on some other part of the coast. After fearful perils at the outset, the *Inconstant* kept on her course to its appointed end amid almost perpetual storms, which did not cease even when she had reached the shelter of Plymouth Sound.

Thus ended Lord Durham's mission to Canada, and instead of bringing those great results to the country, and that harvest of honour and power to himself, for which we had hoped, and for which we had all laboured, it seemed at its close to have ended in nothing but disappointment to all concerned in it. Its most fatal consequence, indeed, was his feeling that disappointment so acutely, and that, sickened by the malignity and weakness of which he had been the victim, he from the hour of his return gave way to a depression that quickened the progress of his malady. Many of those who enthusiastically rallied around him on his return, have since reproached him that he threw away the opportunity of complete justification and satisfaction, and refused to take that position in the political world which seemed to invite him. But this course he took after full and anxious consideration, and took as wisely as I am sure he did it honestly. Abstaining from all public part in general politics, he reserved himself for Canada alone. Nor did he seek to urge on the discussion of that topic. When Lord Winchelsea imprudently attempted to renew his persecution of Mr. Turton, Lord Durham's short and vigorous speech scared his assailants, and at once and for

ever checked all similar attacks. From that hour he remained unmolested by those who had been so eager in assailing him during his absence. He never in his turn became the assailant. Public opinion had done him such complete justice in the matter of the Ordinance that, if he had brought it again before Parliament, it must have been for the purpose of assault, not of self-defence. When at the close of the session the question of the future government of Canada came before the House of Lords, he contented himself with a short speech, in which he neither defended himself nor attacked others, but, approving of the policy of ministers in postponing final legislation on the subject, emphatically impressed on the House of Lords the principles on which he thought that their conduct towards Canada ought to be shaped. At the moment, perhaps, the vindication of measures unjustly condemned and thwarted, and the triumphant assertion of his own policy by dint of argument and eloquence, might have given more satisfaction to his friends. But now we may with far higher and purer pride look back to the forbearance which he displayed, recollecting that, when all others thought most of his personal position and wrongs, he said nothing of them. True to the public principles of his past life, he allowed no impulse of anger, no scheme of ambitious aggrandizement out of the many assiduously suggested to him, to turn him from the course which, independently of all personal considerations, he judged to be the best calculated to serve his country. To the last day of his life his influence was steadily and effectually employed in repressing those feelings on the part of his political friends which, if uncontrolled by him, would on many an occasion have given the finishing blow to the existence of Lord Melbourne's ministry. More active exertions in the general field of politics, and the consequent attainment of the power of more effectually serving his country in office, we might have expected, had he possessed the health which had been the spring of his former energy. This it pleased Providence to deny us; but his hard fate could not deprive him, during the period that followed his return from Canada, of the opportunity of exhibiting a generous forbearance and an unselfish love of country.

Nor need we look with any dissatisfaction to the fruits of his mission. That these were at first less obvious and less abundant than they should have been was not his fault, but that of those whose misconduct cut short the brilliant and useful career of his administration, and compelled him to leave to others the execution and completion of what he had

only planned or commenced. The period of his government, which seems so long when we follow its various incidents and acts, was after all but of five months' duration, and yet in that short time what great practical results did he bring about! His policy in fact it was that pacified Canada and secured its retention. He found the gaols of Lower Canada full of prisoners trembling for their lives, which had been forfeited to the law, and the frontiers crowded with hopeless and reckless exiles. These traces of insurrection he removed, freed every prisoner, and recalled the exiles, without shedding any man's blood or confiscating any man's estate. In Upper Canada, where he could not so speedily or completely exercise his authority to the same effect, he nevertheless succeeded in producing nearly similar results by his advice and example. He found the British of Lower Canada suspicious and angry: he inspired them with confidence. He found the great mass of the people of Upper Canada animated by a discontent which bordered on disaffection, and utterly despairing of justice from Great Britain. He rallied them around the British Crown with that unanimous feeling which they since exhibited during the winter of 1838–9, when the whole population turned out against the invaders, and not a man, or hardly a man, of those most inclined to disaffection in the former troubles lent the slightest aid to the attack. He found a still more serious cause of alarm in the alienation of the great body, and the active hostility of a dangerous portion, of the people of the United States. He entirely changed the public opinion of the United States with respect to Canada; he turned it from assailing to supporting the British Government; and he so completely destroyed all general or open disposition to aid the insurgent Canadians, that, although some outrages were committed by the few reckless desperadoes who crossed the frontier at Prescott and Sandwich, the refugees and their adherents never again with any effect made an appeal to the sympathy of the American people. And though it was impossible for him to conciliate the long estranged goodwill of the French Canadians, or to eradicate their insane aspirations after the ascendancy of their race, he deprived their discontent of every justification, and so stripped them of all aid that their second insurrection exhibited only their utter want both of resources in themselves and of allies without.

I have already adverted to the practical reforms of every kind which Lord Durham effected or put in train during his stay in Canada. Besides those which were sufficiently simple to admit of being completed by him, the foundations of almost

every reform of the defective institutions of Lower Canada were laid by the Commissioners of Inquiry which he established, and by their reports contained in the Appendix to his own, or by the suggestions in the Report itself. It has been the good fortune of Mr. Poulett Thomson, acting under the suggestions made to him by Lord Durham and those attached to Lord Durham—prompted by the advice of those whom we recommended to him as his advisers—and supported by those whose goodwill our private representations secured for him, to achieve some great and useful reforms, But if he had improved the administration of justice, he found its defects marked out in Lord Durham's Report. If he had prepared a system of municipal institutions, it was Lord Durham who painted the mischiefs of the want of them, and marked out the means by which they might be erected on an efficient and liberal basis. If he has been able to establish a comprehensive and sound system of education, the necessity and the means were alike pointed out by Lord Durham's Commission. If Montreal is enfranchised, if a registry of landed property is secured, it is by the adoption of Lord Durham's measures for each purpose. And if, above all, any reform is yet effected or shall hereafter be effected in the management of the Crown lands, the credit of procuring the requisite information and of settling the principles to be adopted for the future administration of this department, is due to Lord Durham's Commission, and to it alone. All these were reforms of which neither the necessity nor the practicability were suggested to Lord Durham from home. He saw the defects, he devised the remedies ; others have stepped in to appropriate the honour of the execution.

But unquestionably the most important purpose of the mission was that of effecting, or rather suggesting, such improvements in the constitution and general administration of government in Canada, as might guard us against the recurrence of the disorders that had for many years afflicted both provinces. This task remained to be performed when Lord Durham returned to England, and it has been completely performed in his Report. The praise of laborious inquiry and of comprehensive thought has never yet been refused to this document by those even who have most loudly condemned it. For it has been bitterly condemned by Tories, whose narrow and slavish notions its free principles of government could not but shock. It has been condemned by those whose attachment to the routine of our colonial policy has been revolted by the startling recommendation of a generous confidence in

the good sense of the people of the colonies. It has given great offence to those ministers whose whole recent system of colonial policy it showed to have been shallow and unsound. And there are some, who can dispute no position in it, who cannot deny the truth of its statements or the general soundness of its conclusions, but who, being of that school of wily statesmen that imagine political wisdom to consist in going round about to one's end—that regard truths as mischiefs to be suppressed, or at any rate as dangerous matters to be kept only for cabinets and saloons—regret that Lord Durham should have said anything about responsible government, or at any rate that what he said should have been published to the world. We may console ourselves that the public at large, while admitting the truth of Lord Durham's views, have not shrunk from them as dangerous on that account. Even amid the universal indifference with which the colonies are regarded here, the public in this country have generally and highly approved of the Report. But in the colonies it has become the textbook of every advocate of colonial freedom, of every one who does not deny that our countrymen in the colonies should have that voice in their own government which Englishmen are used to regard as the birthright of their race. In Canada it has become the rallying-point of the great body of the people; those whom the ancient misgovernment had driven to the verge of disaffection have waived all their former objects for that of the practical adoption of Lord Durham's Report, and under his name every subdivision of the friends of liberal government have united as 'Durhamites', and insist on that which he sanctioned and no more. Nor has the Report been less studied or adopted in the other colonies. The people of the West Indies and of the Cape of Good Hope have claimed the benefit of its principles, and every newspaper from the various colonies of the Australasian world appeals to it as the manual of colonial reform.

Nor need we repine at the practical effect already given to the suggestions of the Report. Many of these indeed put forward rather what were views of ultimate and possible improvement, and general principles of colonial administration, than what can be regarded as positive recommendations for direct and immediate legislation. But the Report did distinctly and earnestly urge the legislative union of the two Canadas, and the principal purpose of the Act of the last session goes to give effect to this recommendation. I think I see in the Lower Provinces a tendency towards such an accession to the present union as would realize Lord Durham's

splendid scheme of a great British community in North America. The principle of executive responsibility which he recommended, not with the vain notion that it could be enforced by positive law, but as the sure and only foundation of a firm and peaceable government of the colonies, though repudiated in words, has been already partially recognized in the appointments made by the Government. But it does not matter very much what the Government repudiates or what it recognizes, for certain it is that in the Parliament of United Canada it has created a power from which no Government in this country will be able to withhold that voice in the selection of its rulers, which Lord Durham showed to be a necessary consequence of representative institutions.

If then the mission to Canada must ever be an object of mournful contemplation to us who loved Lord Durham and lament his irreparable loss, yet, when we look to the interests of his reputation, we may regard the execution of this high and difficult task as among the noblest of the many noble memorials of his career. Let us remember that, if he failed to obtain the results of immediate satisfaction and credit to himself, it was because he laboured for higher and more permanent objects. In this, as in every other part of his course through life, he left the trodden path of old routine and bygone systems, and was the first to advance towards whatever of wider and clearer views the enlarged experience of mankind has in these days reached. Here, as in other matters, his foresight enabled him to base his policy on those principles on which the coming age of the world will be ruled. He who acts thus must not expect that he will be rightly appreciated by the little knots of intriguers, from whose thoughts and interests he separates himself. But from the mass of his countrymen he may expect at least that generous sympathy with the rectitude of his purpose, which Lord Durham found even in his own day. From after times he will receive a yet larger meed of justice. For, as coming events in their appointed course shall prove the sagacity with which he foresaw them—as the public mind, gradually opening to new and sound views, shall be prepared to read the right lesson in the occurrences which it may witness—so will shine forth with daily increasing brightness the character of that statesman, who alone in his day rightly appreciated the worth of our colonial empire, and saw on what deep and sure foundations of freedom its prosperity might be reared. With us, then, that sorrow for his loss, which no time can efface, need be mingled with no vain and injurious regrets for the results of his labours,

which will long survive in the bettered lot and grateful recollections of our colonies, with none for a fame which, instead of being laid in his untimely grave, will date from the hour of his death the commencement of a long and vigorous existence.

Note A, referred to in Page 368.

There is one passage in the Proclamation, of which the propriety has been much questioned even by some of those most inclined to judge favourably of Lord Durham's conduct. It is that passage in which he states that, the Ordinances having been disallowed, there existed no impediment to the return of the persons who had been sent to Bermuda, or prevented from returning to the province. This was regarded by many as a mere outbreak of temper on Lord Durham's part, and it was supposed that, in order to throw obloquy on the Government at home, he actually invited dangerous persons to return to the colony. I confess that at first sight the passage in question has this appearance, and therefore I feel bound in justice to say that on that very ground Lord Durham was very reluctant to insert this passage, which I suggested, and very earnestly and perseveringly pressed on him. But practical considerations, totally unconnected with any reference to the conduct of the Home Government, induced me to make the suggestion, and, I think, justified Lord Durham in adopting it.

The instant that the news of the disallowance reached Canada, it was supposed that some of the exiles would enter the province. It seemed doubtful whether in that case they would be liable to be tried for their original offence. Nobody could deny that they had undergone *some* punishment, however inadequate, and the sound principle of *Non bis in idem* seemed, therefore, applicable to their case. But this point just admitted of so much doubt, as to make it quite certain that criminals so obnoxious to a large and violent party would not be allowed to re-establish themselves quietly at their former abodes, without some proceedings against them being attempted. We felt quite sure that they would be arrested, and that half the magistrates in the province would be eager to commit them for trial. The grand juries would have found bills, the trials must have taken place, and then would have recurred all the mischiefs which the Ordinances had been designed to avert. The angry passion of the past insurrection would have been revived by the proceedings in the courts, the guilt of the prisoners would have been proved in the clearest

manner, and there would have infallibly followed (as in the recent case of the murderers of Chartrand) a verdict of acquittal in the face of evidence.

The punishment of the exiles could only have been secured by suspending the habeas corpus, or by altering the constitution of the tribunals by either substituting courts martial for the ordinary courts of criminal law, or packing the juries. The last Lord Durham did not choose to do, and the two former courses (though defensible in certain emergencies) appeared most unadvisable in the circumstances of the case. He had abstained from having recourse to such encroachments on constitutional principles and personal rights, when the difficulty of disposing of the prisoners had first presented itself to him in all its magnitude on his arrival in the province; and he was most averse, for the sake of punishing *a few*, to take a course from which he had shrunk when it would have enabled him to punish *all* the guilty. And it should always be borne in mind that the measures of rigour, which may be most necessary *during* an insurrection, may be the most unadvisable when insurrection is apprehended. At that time to have suspended the habeas corpus, or substituted courts martial for juries, would simply have been to supply the disaffected with a pretext for the rebellion which we knew them to be meditating; and, what was more, give them some chance of success by setting public opinion in the United States against the Government of Canada. These were evils not even to be risked except for the most important objects, and the exiles in question were mostly so insignificant, that the keeping them out of the province really was a matter of no consequence. As for Papineau, the only one among them of any consideration, we had learned enough of his character to feel assured that his presence among the disaffected would have been the surest means of paralysing their operations. Besides which, however great his moral culpability, I knew that the evidence in the possession of Government, all of which I had gone through, would not in his case have justified a legal conviction.

The evils, which appeared thus likely to result from the return of the exiles, rendered it imperative on us to take some precautions to avert them. We were perfectly sure that some of the exiles would return without permission the moment that they heard of the disallowance of the Ordinances, and the fact is that one or two actually did return before the Proclamation was out. After the first step taken against any of them after their return, the consequences would have been

beyond Lord Durham's control, and as he could not bring himself to commit the Government to an arbitrary course for the purpose of punishing a score of persons, he would have no choice but of letting matters run their course of arrest, trial, and unjust acquittal.

The great thing then was to prevent any step being taken against the exiles, and as they were sure to obtain impunity in the end, to let them have it at once without all the intervening excitement, and without bringing the administration of justice into further contempt. I therefore pressed on Lord Durham to take the bull by the horns, and as he knew that he could not punish the exiles if they came back, at once to tell them that there was nothing to prevent their doing so. By taking this course Lord Durham did in fact avoid all the excitement, exposures, recriminations, and subversion of justice which would have followed from his doing nothing; and, on the other hand, the worse mischief which would have resulted from his having recourse to violent exceptional measures. When the subsequent insurrection actually did break out, the rebels could allege no harsh act on the part of the Government as a provocation. And what was the practical mischief that resulted from letting these people back? None that returned did any harm, or even, as I firmly believe, took any part in the subsequent insurrection. But those who remained out of the province did all the harm they could.

Of course it is always an evil in the way of example, if notoriously guilty persons enjoy perfect impunity. I trust, however, that I have shown that punishing the persons in question by any unconstitutional means would have produced far worse effects even than their going unpunished.

In order to keep up the confidence of the loyal portion of the Canadian public in himself personally and generally in the Provincial Government, it was necessary for Lord Durham to point out that the impunity of these guilty and obnoxious persons was not his doing, but that of the Home Government. He could say this with perfect justice, for he had done his best to punish; his measures had been defeated by the interference of Parliament, and the present difficulty had been created solely by the disallowance of the Ordinances. And I think that it was quite as much in accordance with sound policy as with justice for him to lay the blame on Parliament. For as blame must in the opinion of the colonists rest on some portion of the Government, it was far better that it should rest on the House than the Provincial Government.

A little more discredit thrown on the proceedings of Parliament could hardly produce any sensible effect in augmenting the odium which at that moment rested on that body in the opinion of the colonists. But anything that cast suspicion on the policy of the Provincial Government would have seriously increased the practical difficulties which surrounded not only Lord Durham, but also his successor. In Parliament the colonists had no confidence, in the provincial authorities an entire trust, and it would have been very unwise to weaken the influence of the latter by subjecting them to any part of the blame which Parliament and the Home Government alone deserved.

At any rate, as I began by saying, the course pursued by Lord Durham in this matter and the passage in the Proclamation were both adopted at my urgent suggestion ; and I, not he, am answerable for what was done, as well as for the way in which it was announced. He was, of course, obliged to depend greatly on me with respect to all that concerned the internal administration of the province, and more particularly in matters connected with the administration of justice. If my advice was wrong, he could not be blamed for acting by it in such matters.

I am bound to take on myself whatever blame is due to me, for well I know he never would have cast it on me. Every man who has to act on a great variety of matters of importance must rely on those whom he employs and trusts ; and Lord Durham was necessarily compelled in much that he did to rely on me and act on my advice. Some steps that he took at my suggestion were among those that were most fiercely assailed either at home or in Canada. Yet never have I any reason to believe that he threw on me even the blame that I deserved. Never certainly, though often he might justly have done so, did he reproach me with the consequences of my counsels, never at least but once, in a moment of very natural excitement, and then he repaired the reproach in half an hour.